**INITIAL STATEMENT OF REASONS**

**California Alternative Energy and Advanced Transportation Financing Authority**

**Sections 10092.1, 10092.2, 10092.3, 10092.4, 10092.6, 10092.7, 10092.8, 10092.10, 10092.12, 10092.13, 10092.14, and 10092.15.**
**Title 4, Division 13, Article 6**
**of the California Code of Regulations**

## INTRODUCTION

The California Alternative Energy and Advanced Transportation Financing Authority ("CAEATFA" referred to herein as "the Authority") is organized and operating pursuant to Division 16 (commencing with section 26000) of the California Public Resources Code and pursuant to the authority vested in it by Public Resources Code Section 26009 to promulgate regulations. These regulations are necessary for the Authority to carry out its functions as the administrator of the California Hub for Energy Efficiency Financing under its Memorandum of Agreement with the California Public Utilities Commission (CPUC). Specifically, these Regulations will update the Commercial Energy Efficiency Financing Program ("Referred to publicly as the GoGreen Business Program," and additionally here in this document as "Program"), one of several programs devised in the CPUC approved *Decision Implementing 2013-2014 Energy Efficiency Financing Pilot Programs* ("Decision")[1]and subsequent CPUC actions[2]. The regulations described below were created after considering all comments, objections, and recommendations regarding the proposed action.

On September 19, 2013, the CPUC approved the Decision, and requested the Authority act as the master administrator of the California Hub for Energy Efficiency Financing ("CHEEF"), funded by ratepayer dollars collected by the four investor-owned utilities—Pacific Gas & Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company (collectively, the "IOUs"). In July 2014, the Authority received initial 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 to implement the CHEEF.

Under CAEATFA's statutory authority (Division 16, commencing with §26000 of the Public Resources Code) to provide "financial assistance" to "participating parties" for the implementation or "projects" as those terms are defined in PRC §26003, these regulations interpret the Decision and implement the Program. To encourage commercial energy efficiency financing, the Authority is revising key components of the Program to add and modify the list of Eligible Savings Measures ("ESMs"), establish rules for On-Bill Repayment ("OBR") by which customers can repay financing agreements for energy upgrades through their utility bill, and create a streamlined pathway for Microloans, or financing agreements under $10,000.

[1] Decision Implementing 2013-2014 Energy Efficiency Financing Pilot Programs. Decision 13-09-044.
[2] CPUC has issued additional actions addressing issues related to the implementation of the pilot programs, including Decision 15-06-008, Decision 15-12-002, Decision 17-03-026 and Decision 21-08-006

OBR was developed in accordance with CPUC Decision 13-09-44 which viewed on-bill repayment as critical a means to spur the uptake of energy efficiency projects. The actual design and implementation of on-bill repayment functionality proved to be much more legally and logistically complex than anticipated and has taken several years of effort. Since 2015, The Authority has been working extensively with the IOUs and finance companies to establish parameters for OBR which would provide sufficient protection from legal risk for both parties, while not placing undue burden on Finance Provider Entities ("FPEs") by adding cumbersome checks and processes to existing processes. In previous years, the Authority held numerous informal workshops to receive industry and stakeholder feedback on the OBR design. Some of the operational and administrative challenges needing to be addressed prior to regulations being adopted included:

- Devising a centralized, statewide hub through which multiple Participating Finance Entities could communicate seamlessly with and receive payments from multiple IOUs
- Agreement on a method by which customers could authorize adding non-utility charges to a utility bill which provided sufficient legal protection to satisfy legal counsel of all four IOUs while not creating barriers to participation
- Identifying necessary data points to communicate the details of OBR and codifying these into a standard data exchange protocol between the IOUs and the Authority
- A technical build-out of methods of communicating these data points, which included development and testing of IT systems with all four IOUs to the satisfaction of all parties
- Devising ways to mitigate disruption to lenders cash flows given occasional billing delays and returned customer payments
- Working with the IOUs to update their OBR tariffs and receiving approval of the tariffs from the CPUC
- Providing a satisfactory means of managing and transferring customer repayments owed to FPEs traveling through the IOUs and the Authority's contracted Master Servicer back to the FPEs

Once amendments necessary for OBR as well as the Microloan pathway and updates to the Energy Savings Measures list had been drafted for existing regulations, the Authority presented a public workshop on May 21st, 2021, to an audience of finance companies, utilities, project developers, and relevant public agencies. Following this workshop, changes proposed through public comment were incorporated into regulations. Staff submitted regulations for Board approval on June 15th, 2021. These regulations were initially approved by OAL on July 19th, 2021, through the emergency rulemaking process (OAL File No. 2021-0707-01E). Staff submitted regulations without further amendments for emergency readoption which were approved by the Board on November 16th, 2021, and subsequently approved by OAL on December 30th, 2021 (OAL File No 2021-1221-01EE). Staff submitted regulations without further amendments for a second emergency readoption which were approved by the Board on March 15th, 2022, and were accepted by OAL on April 12th, 2022 (OAL File No. 2022-0405-01EE). The current emergency regulations expire on July 19th, 2022. The proposed regulations contain modifications initially adopted under the emergency regulation process as detailed above as well as additional modifications described below. The Authority proposes to amend Title 4, Division 13, Article 6, §100092.1 through §100092.14 as well as add §10092.15 of the California Code of Regulations concerning the implementation of the Commercial Energy Efficiency Financing Program.

The proposed Regulations address the on-bill repayment mechanism, a streamlined pathway for microloans, new eligible energy savings measures and incorporate lessons learned from Program implementation. The proposed amendments and objectives for each modification are described below. Additional modifications are proposed for formatting consistency and grammar; these non-substantive amendments are not discussed.

The proposed Regulations duplicate or overlap state or federal regulations which are cited as "authority" or "reference" for the proposed Regulations and the duplication or overlap is necessary to satisfy the "clarity" standard of Government Code §11349.1(a)(3).

GLOBAL MODIFICATIONS

- Non-substantive edits are being made throughout regulations in the interest of clarity and consistency of language.
- Several sections are being modified to change the same language regarding required certifications for Program participants:
    - §10092.2(c)
    - §10092.3
    - §10092.4(c)(7)(J)(formerly)
    - §10092.8(b)(3)(A)(vii)(formerly)
    - §10092.8(b)(3)(D)(vii)(formerly)
    - §10992.10(e)(5)(formerly)

1. Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is Intended to Address:

These sections of the regulations all pertain to data and information submitted by potential or current Program participants to the Authority. It is important that data and information provided by truthful and accurate.

2. Specific Purpose of the Regulation:

Language is being removed that requires Primary Finance Provider Applicants, Affiliate Finance Provider Applicants, Eligible Contractors, and Eligible Project Developers to certify that all the information provided on their applications to the Program is true and correct to the best of the signatory's knowledge. Language is also being removed that requires Finance Provider Entities, and Participating Contractors to certify that information provided is true and correct to the best of the signatory's knowledge regarding their submission of project, finance agreement and claim data.

3. Necessity:

The regulations already require these participants to sign the Program applications by a person authorized to legally bind them. This change is being made to simplify regulatory language.

4. Technical, Theoretical, and/or Empirical Studies, Reports, or Documents:

This change is being made at the recommendation of STO legal counsel.

5. Alternatives to the Regulations Considered by the Agency and the Agency's Reasons for Rejecting those Alternatives:

The alternative was the original language, which was added for thoroughness in Program certifications, but is now being removed as redundant.

6. Alternatives to the Proposed Regulation Action that Would Lessen any Adverse Impact on Small Business:

The language of certifications made by Program participants has no impact on small businesses.

7. Evidence Supporting Finding of No Significant Adverse Economic Impact on any Business:

There is no economic impact resulting from changes to certifications.

**SECTION-BY-SECTION ANALYSIS**

**§10092.1 DEFINITIONS**

1. Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is Intended to Address.

Current regulation definitions do not encompass changes made to allow for the On-Bill Repayment feature contemplated in CPUC Decision 13-09-044 and several definitions are being added or amended. The proposed amendments also establish a new public-facing Program name and define "Microloan."

2. Specific Purpose of the Regulation

Pursuant to CPUC Decision 13-09-44, the Authority is encouraged to include On-Bill Repayment (OBR) in addition to Credit Enhancements (CEs) "consistent with the Commission's goal of increasing the number of non-residential EE projects." Amendments to this section of Regulations are made with the goals of incorporating OBR and creating a more streamlined Microloan pathway to enable Participating Finance Entities to offer financing for smaller. Briefly:

- **§10092.1(l):** "Delayed Bill" is added to describe a delay of the date on which an IOU is expected to send a monthly bill to an OBR Customer. A delayed IOU bill is one of two events that can trigger the use of the Operational Reserve Fund as described in §10092.15(i)(1)(A).
- **§10092.1(u):** "Eligible Property" is updated to be inclusive of more residential housing business models
- **§10092.1(kk):** "GoGreen Business Energy Financing" is added as the public-facing name of the Program
- **§10092.1(ss):** "Microloan" is added to facilitate a streamlined pathway for Participating Finance Provider Entities to offer smaller amounts of EE financing to customers.
- **§10092.1(ww)-(eee):** Terms are added for the implementation of OBR.
- **§10092.1(mmm):** "Returned Item" is added to define a condition in which a customer's returned payment could lead to a shortfall in OBR payments
- **§10092.1(qqq):** "Total Charge-Off Amount": the language of subsection (2) is updated to match subsection (1) for consistency.

3. Necessity

OBR is designed to provide private finance companies with a centralized hub to receive repayments for energy efficiency upgrades through the billing systems of all four IOUs. The Authority has developed the first-of-its-kind in the nation, open-market approach to OBR, allowing customers to transact with their choice of Finance Provider Entities. The need to create a uniform platform by which multiple Finance Provider Entities can receive payments from four unique IOU billing systems, requires a highly complex infrastructure to ensure customer payments are processed and routed quickly and accurately. New terms are being added to provide reference to this infrastructure and to provide needed guidance for Finance Provider Entities related to eligibility as well as payment processing.

- Further, a new term is necessary to define the Microloan financing product. For a description of the necessity of the Microloan pathway, see §10092.6, below. **§10092.1(l):** "Delayed Bill" The

definition is needed to describe a delay of the date for when an IOU is expected to send a monthly bill to an OBR Customer. The Authority needed to reference when this event happened and trigger the use of the Operational Reserve Fund (ORF). For more on the ORF, see §10092.15 below.

- **§10092.1(u):** "Eligible Property" The reference to "residential rentals" was changed to "residential housing" to clarify the original intent to include both rentals and leases.

- **§10092.1(ss):** "Microloan" A financing agreement with a Total Financed Amount of $10,000 or less, is defined as a Microloan. The previous underwriting, project eligibility and data and loan submission requirements were too burdensome for Participating Finance Entities to offer small amounts of financing. There is a customer need for small dollar financing agreements, particularly among underserved small businesses. At the same time, smaller amounts of financing pose less risk to customers, finance companies, and ratepayers. The Microloan product is, thus, subjected to fewer requirements than larger financings.

- **§10092.1(ww):** "OBR Approval Date" This term is needed to define the date that an IOU will confirm the OBR Total Charge will be added to the customer's utility bill. Staff needed the ability to denote and communicate when financing charges are approved to appear on a customer's bill.

- **§10092.1(xx):** "OBR Customer" This term is needed to specify an Eligible Commercial Financing Customer who has chosen to participate in OBR as described in §10092.15. The Authority and the Participating Finance Provider Entities need to be able to distinguish this entity from the IOU's OBR Tariff definition of "Customer," though in most cases the two will be the same.

- **§10092.1(yy):** "OBR Modified Charge Cutoff Date" This term is needed to define the date each month by which a Finance Provider Entity must inform the Authority that the charge amount appearing on the customer's IOU bill needs to be updated. The IOUs need sufficient time to modify the charges in their systems before sending out a customer bill. If a Finance Provider Entity needs to update the amount that appears on a customer's bill, the Finance Provider Entity must provide the updated amount prior to this date in order for the updated amount to appear on the customer's next IOU bill.

- **§10092.1(zz):** "OBR Removal Date" This term is needed to define a date on which an OBR customer is removed from participation in OBR and the charges will no longer appear on the customer's IOU Bill. The Authority and the IOUs need a reference date to track when a customer is no longer participating.

- **§10092.1(aaa):** "OBR Tariff" This term is needed to reference On-Bill Repayment Tariffs filed by each of the IOUs through advice letters approved by the CPUC. Some aspects for OBR payment applications, such as in the case of partial payments, derive from the IOU's filed and approved OBR tariffs; therefore it was necessary for the Authority to reference them.

- **§10092.1(bbb):** "OBR Total Charge" This term is needed to define the financing charges, including any applicable late fees, to appear on the customer's IOU bill. The Authority needs to communicate this amount to the IOU in order for the correct charge amount to appear on the customer's utility bill.

- **§10092.1(ccc):** "On-Bill Repayment (OBR)" This term is needed to define the concept of OBR, a term used throughout the Regulations.

- **§10092.1(ddd):** "Operational Reserve Fund (ORF)" This term is needed to support the creation of a reserve fund that will smooth the timings of repayments for Finance Provider Entities. The ORF may be drawn upon to smooth repayment streams to Finance Provider Entities participating in OBR when a payment delay occurs through no fault of the Finance Provider Entity or customer. The ORF is utilized when those disruptions occur and is repaid when normal payments resume. See §10092.15(h) for Regulations describing the operation of the ORF.

- **§10092.1(eee):** "ORF Balance" This term is needed to refer to money owed to the ORF by a Finance Provider Entity as a result of ORF utilization on behalf of that Finance Provider Entity. It is necessary to be able to communicate to a participating Finance Provider Entity if they owe funds.

- **§10092.1(mmm):** "Returned Item" This term is needed to define one of two events which cause a customer's payment to be unsuccessful, resulting in a shortfall in OBR payments that could lead to a lack of timely payment to a Finance Provider Entity. The Authority needs to be able to reference these events in order to trigger the use of the Operational Reserve Fund.

- **§10092.1(qqq):** "Total Charge-Off Amount" The language of subsection (2) is necessary to match subsection (1) for consistency.

4. Technical, Theoretical, and/or Empirical Studies, Reports, or Documents

The Authority did not rely on any technical, theoretical, or empirical studies in proposing the adoption of this regulation. The Authority relied on authorizing statute and existing regulations, its historical experience administering the Program and input from stakeholders and industry participants.

With regard to setting the definition of Microloan at $10,000, the Authority relied on input from microlenders serving very small business customers as described in §10092.4 and §10092.6, below. The Authority added defined terms to this section based on research into existing on-bill repayment programs and with input from finance companies, the IOUs, and the CPUC, as described in relation to §10092.15, below. Also, for OBR-related terms, the Authority reviewed the existing IOU OBR Tariffs to ensure conformity.

5. Alternatives to the Regulations Considered by the Agency and the Agency's Reasons for Rejecting those Alternatives

**Related to OBR,** the Authority found it infeasible to avoid including a standard set of terms because of the need for consistency with the filed IOU Tariffs that were approved by the CPUC as well as the OBR IT infrastructure built by the IOUs. Alternatives to the approach of On-Bill Repayment as a financing mechanism itself are discussed in §10092.15, below.

**Related to the Microloan definition,** The Authority considered setting the cap at $5,000, which would have been consistent with the current microloan pathway in Authority's residential energy efficiency financing Program (GoGreen Home). Also, one FPE had already expressed willingness, even without a regulatory change, to expand their offerings down to the range of $5,000 - $10,000, despite financing agreements of this size resulting in a large amount of administrative work for a very small return. (For most of the Program's operational life, the minimum financing amount available for borrowers has been $10,000.) However, after discussion with a variety of Participating Finance Entities as well as potential participating finance companies and Microlenders, the higher limit of $10,000 for the streamlined pathway was set in order to allow more finance companies to offer much needed small dollar financing.

6. Alternatives to the Proposed Regulation Action that Would Lessen any Adverse Impact on Small Business

The new definition of Microloan is being added specifically to benefit the smallest businesses in California due to the difficulty that these customers face accessing financing. Existing Program requirements have been eased to allow Participating Finance Entities to provide small businesses with access to affordable energy-saving improvements.

Definitions for OBR are being added to this Section for the needed practicality of referencing the OBR repayment mechanisms and ability to describe how OBR operates. For a discussion of alternatives considered for OBR, see §10092.15, below.

7. Evidence Supporting Finding of No Significant Adverse Economic Impact on any Business

The Authority has determined that there will be no significant adverse economic impact on any California businesses. Participation in the Program is voluntary, and, in fact, the Authority finds that the proposed regulation may have a positive effect on businesses of contractors who perform the work. The proposed regulation may also have a positive effect on the state's economy and environment generally because of the increased economic activity and energy conservation due to the Financing Customer's investment in Energy Efficient improvements for their businesses.

**§10092.3 ADDITIONAL REQUIREMENTS FOR ENTITIES THAT ARE NOT FINANCIAL INSTITUTIONS**

1. Public Problem, Administrative Requirement or Other Condition or Circumstance that the Regulation is intended to address.

In addition to the requirements set forth in §10092.2(c), to be approved as a Finance Provider Entity, Finance Provider Applicants who are not Financial Institutions are required to meet certain additional requirements. Due to changes in the industry, the standards by which such businesses operate and the insurances they carry have changed. The Authority's standards also need to change to reflect the reality of commercial financial services to attract finance companies to the Program.

2. Specific Purpose of the Regulation

**§10092.3(f)(2)** (formerly): This subsection is being amended to remove a requirement for a Finance Provider Applicant to maintain motor vehicle liability insurance with limits of not less than $1 million per accident to reflect the current practices of the industry.

3. Necessity

**§10092.3(f)(2)** (formerly): This amendment is necessary to bring the regulations up to current industry practice. Stakeholder feedback confirmed that lenders do not travel in company cars or even personal vehicles to project sites and that this type of insurance policy is no longer something regularly procured. The Authority spoke with potential participating finance companies, and it became clear this requirement did not provide any value to GoGreen Business, the IOUs, or for customer protection.

4. Technical, Theoretical, and or Empirical Studies, Reports, or Documents.

The authority relied on direct discussion with the current stakeholders and potential stakeholders in seeking potential ways of improving the problem. It was confirmed by several sources that desktop and picture inspection have become the norm and finance companies no longer utilize company vehicles for project inspection purposes.

5. Alternatives to the Regulations Considered by the Agency and the Agency's Reasons for Rejecting those Alternatives

The Authority finds that no alternatives it has considered would be either more effective in carrying out the purpose of the proposed regulation or equally effective but less burdensome to affected Eligible Commercial Financing Customers, Finance Provider Entities, Participating Project Developers, Participating Contractors, or Customers. Removing this requirement reduces a burden for participants.

6. Alternatives to the Proposed Regulation Action that Would Lessen any Adverse Impact on Small Business

The Authority has not identified any alternatives nor have any alternatives otherwise been identified and brought to the attention of the Authority that would lessen any adverse impact on small businesses. Program participation is voluntary.

7. Evidence Supporting Finding of No Significant Adverse Economic Impact on any Business

The Authority has determined that there will be no significant adverse economic impact on any California businesses. Participation in the Program is voluntary, and, in fact, the Authority finds that the proposed regulation may have a positive effect on businesses of contractors who perform the work. The proposed regulation may also have a positive effect on the state's economy and environment generally

because of the increased economic activity and energy conservation due to the Financing Customer's investment in Energy Efficient improvements for their businesses.

**§10092.4 CONTRACTOR AND PROJECT DEVELOPER PARTICIPATION**

1. Public Problem, Administrative Requirement or Other Condition or Circumstance that the Regulation is intended to Address

The participation of contractors and project developers is essential to the success of the Program, as their participation permits additional Projects to be installed and setting eligibility requirements for Program participation further establishes quality control and standards that encourages confidence in measures that are installed. This section describes the role that Contractors play on projects that they install and the role that Project Developers may play on projects installed by a Contractor or that are Self-Installed.

2. Specific Purpose of the Regulation

**§10092.4(a)(3)** is being amended to eliminate the requirement for a self-installed project to be certified by a Participating Project Developer when the project is financed by a Microloan of $10,000 or under. The Project Developer role allows for a party that is not directly involved in installation to direct projects to GoGreen Business but was found to increase the cost of energy efficiency improvements for customers. Examples of project developers include distributors, consultants, or IOU program implementers. A Project Developer is still required by the Program for projects over $10,000 which are fully installed by the customer. **§10092.4(d)(5)** is being amended to specify that permitting documentation is considered one of the types of documentation that must be maintained by Participating Contractors and Project Developers for a period of 18 months.

3. Necessity

**§10092.4(a)(3)** GoGreen Business allows a customer to install certain measures, as designated in the Energy Savings Measures list, without a Participating Contractor. In these cases, the original Regulations intended for a Participating Project Developer to supply the Program with the required data and certify projects. Since GoGreen Business launched, the Authority has identified the need for a streamlined approach for smaller financed amounts, particularly for those projects that will be self-installed. Business owners may opt to self-install measures to keep costs minimal. While the Authority initially assumed that many utility program implementers would be playing the role of Project Developer on projects, several microlender finance companies expressed the desire to offer financing through GoGreen Business directly to their existing customers without necessarily partnering with an IOU program. In that case, requiring a Participating Project Developer, who may charge the customer for their services to provide data and certify projects, adds unnecessary burdens to both the Finance Provider Entity and customer. **§10092.4(d)(5)** The Program requires that all installations be completed in compliance with state and local laws. The primary entities which are engaged in verification and enforcement of these laws are local permitting offices. Compliance with the law by contractors is important not only to protect customers from substandard installation, but also to protect energy savings generated by the Program. This can be enforced through the Program's post-installation inspections and desktop reviews, and at that time permits can be used to verify compliance with state and local laws. It is necessary to specify that Participating Contractors and Project Developers must maintain permit documentation so that they will not be surprised when the Authority requests it as part of a post-project compliance verification.

4. Technical, Theoretical, and/or Empirical Studies, Reports, or Documents

**§10092.4(a)(3)** The Authority consulted with a number of microlenders in California offering loans in the range of $500 - $50,000. These included a number of Community Development Financial Institutions,

non-profit finance companies which are often chartered to help small business owners. The input of these companies shaped the Authority's approach to reducing Program requirements based on which were identified as creating too great of an administrative burden to allow for financing for very small businesses.

**§10092.4(d)(5)** The Authority relied on feedback from its Contractor Manager, a CAEATFA-contracted vendor tasked with the post project desktop reviews and inspections. Feedback was that some Participating Contractors were surprised and the need to retain permitting documentation, making it prudent to clarify this requirement.

5. Alternatives to the Regulations Considered by the Agency and the Agency's Reasons for Rejecting those Alternatives

**§10092.4(a)(3)** These amendments to regulations are the result of considering an alternative to the approach in the existing regulations. The current approach requires a participating Project Developer to provide Program data and certify projects. This Project Developer would either charge a relatively small fee which could be included in the financed amount or would be paid as part of an IOU energy-saving program. This approach is being changed as it creates a barrier in the normal process of small businesses applying for financing with a CDFI. Requiring a third party (the Project Developer) to evaluate the project which may often be for the purchase of a single appliance impedes the financing application process to the degree that it becomes untenable for the business owner and burdensome for the CDFI to coordinate.

**§10092.4(d)(5)** As compliance with state and local laws has been a Program requirement since the beginning, checking for permits was always part of evaluating projects. Adding an explicit requirement in regulations is the alternative to the previous approach which was leaving permit checks implicit but required.

6. Alternatives to the Proposed Regulation Action that Would Lessen any Adverse Impact on Small Business

**§10092.4(a)(3)** Removing the Project Developer certification requirement on a self-install project is a key component of a simplified Microloan pathway. This Microloan pathway is intended specifically to help the smallest business customers access affordable financing for energy-saving upgrades.

**§10092.4(d)(5)** Participation in the Program is voluntary and legal installation has always been a Program requirement so this change does not alter the impact on small business.

7. Evidence Supporting Finding of No Significant Adverse Economic Impact on any Business

The Authority has determined that there will be no significant adverse economic impact on any California businesses. Participation in the Program is voluntary. The proposed regulation may also have a positive effect on the state's economy and environment generally because of the increased economic activity and energy conservation due to the Financing Customer's investment in Energy Efficient improvements for their businesses.

**§10092.6 ELIGIBLE FINANCING CUSTOMERS**

1. Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is Intended to Address

This section sets minimum credit and underwriting guidelines for Eligible Financing Customers. While the Finance Provider Entities are able to set additional underwriting requirements, the Program needs to ensure that loss reserve funds are protected (as they are paid out in the event of a charge-off and claim) and that the FPEs take on an appropriate level of increased risk in terms of approving customers through the Program. Different minimum credit and underwriting guidelines are set for different sizes of financing agreements, reflecting the relative risk to the loss reserve funds.

2. Specific Purpose of the Regulation

The section has been updated for readability by reorganizing the underwriting guidelines to state requirements by the size of the financing agreement. §10092.6 was previously organized with two subsections of global requirements for financing agreements of all sizes which included bankruptcies, liens, and credit checks, followed by two subsections defining requirements for two tiers: Total Financed Amount of less than $350,000 and over $350,000. These changes add a third tier, less than $10,000, and incorporate the global requirements into the three tiers.

The new tier of Total Financed Amount of less than $10,000 (§10092.6(a)) is added to correspond with the definition of Microloan. The sole underwriting requirement is that the Finance Provider Entity perform a credit check using standard industry credit scoring or utilize 12 months of customer utility bill payment history as a credit check.

3. Necessity

The reorganization of the section is necessary to provide clarity to finance companies looking to understand Program rules related to customer eligibility and underwriting. Previously it was organized to include two paragraphs of global standards followed by two tiers of conditional standards, which was harder to follow.

A new tier (§10092.6(a)), based on a Total Financed Amount of up to $10,000, is added to allow streamlined underwriting for Participating Finance Entities offering smaller dollar finance agreements. Offering small dollar finance agreements is administratively challenging for finance companies as interest income on small agreements are much lower, while a certain amount of fixed administrative costs remain in order to originate the agreement. Hearing from Contractors that there was an industry need for financing in the $2,500 to $10,000 range, The Authority wanted to encourage finance companies with the capacity to make small loans and leases to enroll in the Program and thus needed to minimize any additional regulatory burden for these products. For example, requiring a check for positive operating profit or taxable income or the paperwork of a personal guarantee are burdensome and inconsistent with the business models of microfinance companies, which must be able to issue each loan or lease without a lot of custom processes.

Because Microloans of $10,000 and less are so small, the risk to the loss reserve funds, in the event of a charge-off and claim, is much less than for higher dollar loans and therefore it makes sense to have underwriting requirements commensurate with risk. Participating Finance Entities are able to set their own more stringent underwriting criteria or processes in addition to what the Program requires.

4. Technical, Theoretical, and/or Empirical Studies, Reports, or Documents

The Authority consulted with a number of microlenders in California offering loans in the range of $500 - $50,000. These included a number of Community Development Financial Institutions, non-profit lenders which are often chartered to help small business owners. The input of these lenders shaped the Authority's approach to reducing Program requirements based on which were identified as creating too great of an administrative burden to allow for financing for very small businesses.

5. Alternatives to the Regulations Considered by the Agency and the Agency's Reasons for Rejecting those Alternatives

The Authority considered setting the first tier underwriting cap at $5,000, which would have been consistent with the current Microloan pathway in the Authority's residential energy efficiency financing Program (GoGreen Home). Also, one participating Finance Provider Entity had already expressed willingness, even without a regulatory change, to expand their offerings down to the range of $5,000 - $10,000, despite financing agreements of this size resulting in a large amount of administrative work for a very small return. (For most of the Program's operational life, the minimum financing amount available for borrowers has been $10,000.)

However, after discussion with a variety of Participating Finance Entities as well as potential participating finance companies and microlenders, the higher limit of $10,000 for the streamlined pathway was set in order to allow more finance companies to offer much needed small dollar financing and to cover more types of projects. Given that the previous tiers distinguished between financing agreements less than $350,000 and greater than $350,000, it seemed prudent to create a Microloan tier up to at least $10,000.

6. Alternatives to the Proposed Regulation Action that Would Lessen any Adverse Impact on Small Business

Introducing a simplified Microloan pathway is intended specifically to help the smallest business customers access affordable financing for energy-saving upgrades.

7. Evidence Supporting Finding of No Significant Adverse Economic Impact on any Business

The Authority has determined that there will be no significant adverse economic impact on any California businesses. Participation in the Program is voluntary, and, in fact, the Authority finds that the proposed regulation may have a positive effect on businesses. The proposed regulation may also have a positive effect on the state's economy and environment generally because of the increased economic activity and energy conservation due to the Financing Customer's investment in Energy Efficient improvements for their businesses.

**§10092.7 PROJECT ELIGIBILITY**

1. Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is Intended to Address

Because the Program uses ratepayer dollars to expand financing options for Energy Efficiency, it is essential to have clear standards for Projects to access these funds for credit enhancements. Having established these eligibility requirements, the Authority ensures that ratepayer funds are financing approved measures that are installed by approved Participating Contractors and Participating Project Developers. However, modifications were needed to support additional projects that can be safely and effectively self-installed, both through the creation of the Microloan pathway and additional measures made eligible for self-install (as described in §10092.14).

2. Specific Purpose of the Regulation

**§10092.7(c)(2):** Removes the requirement that a Project Developer provide data points and certify a Self-Installed project of less than $10,000. As described in §10092.8(b)(2), required Program data can be supplied by various parties; in this case all data would be supplied by the FPE.

**§10092.7(d)(1):** is updated to make explicit that Participating Contractors or Participating Project Developers may be asked to submit the types of documentation listed in §10092.4(d)(5) as part of quality control reviews.

3. Necessity

**§10092.7(c)(2)** is necessary to specify that a Project Developer is not required for a Project with a value of $10,000 or less. This change aligns with the changes made in §10092.4(a)(3) and the creation of a streamlined Microloan pathway.

Previous regulations specified the requirement of a Participating Project Developer on any Project with self-installed measures for the self-installed measures to be eligible for the Program. This is in keeping with the expansion of the self-installable EEMs and the recognition that such installations can be performed safely and effectively without the cost of a Participating Project Developer. Business owners may opt to self-install measures to keep costs minimal. While the Authority assumed that many utility program implementers would be playing the role of Project Developer on projects, several microlenders expressed the desire to offer financing through GoGreen Business directly to their existing customers without necessarily partnering with an IOU program. In that case, requiring a Participating Project Developer, who may charge the customer for their services to provide data and certify projects, adds unnecessary burdens to both the Finance Provider Entity and customer.

**§10092.7(d)(1):**is necessary to clarify the original intent of the Regulations and ensure that Participating Contractors and Participating Project Developers are not surprised by the request to turn over project documentation during the quality assurance/quality control process.

4. Technical, Theoretical, and/or Empirical Studies, Reports, or Documents

Other than the clarification made in §10092.7(d)(1), the amendment made to this section is to allow for simplified Program requirements for Microloans. Research done to inform this approach is discussed in relation to §10092.4 and §10092.6, above.

5. Alternatives to the Regulations Considered by the Agency and the Agency's Reasons for Rejecting those Alternatives

Other than the clarification made in §10092.7(d)(1), the amendment made to this section is to allow for simplified Program requirements for Microloans. Alternatives considered to this approach are discussed in relation to §10092.4 and §10092.6, above.

6. Alternatives to the Proposed Regulation Action that Would Lessen any Adverse Impact on Small Business

Introducing a simplified Microloan pathway is intended specifically to help the smallest business customers access affordable financing for energy-saving upgrades. The change made to §10092.7(d)(1) is for clarification only.

7. Evidence Supporting Finding of No Significant Adverse Economic Impact on any Business

The Authority has determined that there will be no significant adverse economic impact on any California businesses. Participation in the Program is voluntary, and, in fact, the Authority finds that the proposed regulation may have a positive effect on businesses who perform the work. The proposed regulation may also have a positive effect on the state's economy and environment generally because of the increased economic activity and energy conservation due to the Financing Customer's investment in Energy Efficient improvements for their businesses.

**§10092.8 FINANCING SUBMITTAL AND ENROLLMENT**

1. Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is Intended to Address.

This Section sets requirements for data, documentation and certifications that must be provided for the Authority to enroll a finance agreement in the Program and provide a loss reserve contribution. Data requirements exist to both ensure compliance with Program eligibility rules and to track the reach and effectiveness of the Program in accordance with evaluation criteria set by the CPUC.

The use of a table is introduced to clarify the terms used and to consolidate requirements for data, documentation, and certifications required for the submittal and enrollment of an eligible financing agreement into a single table. Changes to the section are necessary to increase comprehensibility. Changes are also introduced to reduce the data and documentation burden when the Authority found that certain data points did not provide value or could be collected in a less burdensome way.

2. Specific Purpose of the Regulation

**§10092.8(b)(1)(A):** *IOU service confirmation* is changed to "IOU delivery confirmation" to have a broader meaning to reflect the fact that Community Choice Aggregators (CCAs) may be offering "service" of energy that is then delivered by an IOU. For Microloans, the changes specify that the verification of only one IOU must be provided.

**§10092.8(b)(2):** A data table is introduced to clarify which party (Contractor, Project Developer or Finance Provider) supplies data points for enrollment, and when certain data points are not required for Microloans. Additional flexibility is provided in some cases as to which party can provide the data.

- The following data points are being removed as required data points:
    - "The name of the representative of the Finance Provider Entity who submitted the agreement to the Authority"
    - "Whether an advance payment was required of the Eligible Commercial Financing Customer, and, if so, the number of months covered by the payment"
    - "Monthly finance agreement payment amount, including principal, interest if applicable, and any maintenance, oversight, and service charges"
    - "Any additional fees charged to the Eligible Commercial Financing Customer and/or contractor,"
    - "Permit number"
    - "The Scope of Work Completion Date for any work completed by a Self-Installer"

- The following data points were determined as not required for Microloans:
    - **(C)**: "Method by which the customer qualifies as an Eligible Small Business Customer"
    - **(E)**: "An indication of how the entity is organized, e.g., sole proprietorship, corporation, or LLC
    - **(K)**: "Number of units or spaces at the Eligible Property for which ESMs were installed"

- **(Q)**: “A brief description including size, efficiency performance, standard material descriptions, and/or specifications”
- **(S)**: “An indication of whether the ESM is replacing existing equipment or is a new installation”
- **(T)**: “An indication of whether the installation resulted in a fuel substitution for that measure”
- **(X)**: “Description of all Non-ESMs installed as part of a Scope of Work”
- **(AA)**: “Any fees charged by the Participating Project Developer and, if there are fees, a brief description of the services provided”
- **(BB)**: “The amount of any Capitalized Interest included in the Total Financed Amount”
- **(DD)**: “The amount of any IOU, REN, or CCA rebate or incentive sought for a Scope of Work”
- **(EE)**: “The name of the IOU, REN, or CCA issuing a rebate or incentive sought for a Scope of Work, the rebate or incentive name, and, if known, the project identification code”
- **(GG)**: “A description of any Non-ESMs installed by contractors not enrolled with the Program or by Self-Installers"
- **(JJ)**: “A description for the Distributed Generation measure(s) installed”
- **(VV)**: “Whether a security interest was taken against the financing agreement, and, if so, an indication of the type of security interest taken”
- **(ZZ)**: “Whether the interest rate is fixed or variable”
- **(AAA)**: “Amount of the interest rate bought down by the contractor, if applicable”

- For Microloans, requirements are being updated such that an IOU name and account number need only be provided for one IOU, even if multiple IOUs serve the property.
- For Microloans, “The fuel for which there is expected savings as a result of installing the ESM” only need be provided if the financing agreement is being repaid through OBR

“The Scope of Work Completion Date for any work completed by a Self-Installer” will be replaced with the Finance Provider Entity’s funding date.

3. <u>Necessity</u>

**§10092.8(b)(1)(A):** Requirements that utility bills for each of the IOUs servicing the property be submitted to the Authority are changed to allow for the verification of electric or gas “delivery.” The word “delivery” has a broader meaning and reflects the fact that CCAs may be offering “service” of energy that is then delivered by an IOU. For Microloans, the verification of only one IOU is required. This modification allows the Authority to accept methods of IOU delivery verification beyond providing the Program with a copy of a utility bill, such as digital authentication or proof that a Project Developer is implementing a program on behalf of an IOU to reach that IOU’s customers.

**§10092.8(b)(2):** The current regulations are organized by the party or parties that are required to provide particular data points. Consolidating all data requirements into a single table allows a party,

such as a Participating Contractor, to see which data points they are required to provide and allows the reader to easily see which data points are conditional, particularly in the case of data points that are waived for Microloans which have been given new conditional language under the "Exceptions" tab to streamline their enrollment.

- **Data points removed from regulations:** Removal of required data points is necessary to reduce administrative burden on participants if those data points prove to not be needed.
    - "The name of the representative of the Finance Provider Entity who submitted the agreement to the Authority": This removal is necessary as this is an extraneous data point, the main thing the Program needs to know is that the project is certified by an appropriate representative of the FPE.
    - "Whether an advance payment is required of the Eligible Commercial Financing Customer, and, if so, the number of months covered by the payment": These are not data points the Program is utilizing nor reporting externally, so requiring them to be provided is superfluous.
    - "Monthly finance agreement payment amount, including principal, interest if applicable, and any maintenance, oversight, and service charges": This data point is not utilized nor reported externally by the Program so requiring it to be provided is superfluous. Also, monthly payments can vary due to a variety of factors, so this data point is only indicative as an initial payment.
    - "Any additional fees charged to the Eligible Commercial Financing Customer and/or contractor,": The Authority collects this data point during the Finance Provider Applicant's application period and does not need to collect it separately for each finance agreement. The Authority is looking for opportunities to reduce the data submission burden on FPEs. "Permit number": It is necessary to remove this data point because permits are often in the process of being finalized at the time of project completion and a permit number might not be available at time of submission to the Program. Permits are checked as part of the Quality Assurance process described in §10092.7.
    - "The Scope of Work Completion Date for any work completed by a Self-Installer": This data point was intended to stand in for the scope of work completion date of the Participating Contractor. However, as the customer is not a Program participant any date provided would be arbitrary. Because of this, this data point is being replaced by the "Date the financing agreement funded or is anticipated to fund."
- **Data point requirements removed for Microloan projects:** It is necessary to simplify Program requirements in the interest of easing the administrative burden on FPEs providing Microloans, thereby making these loans financially viable. In addition, data requirements removed also into one of two categories: data points not typically collected by microlenders, or data points that the Program does not need in the case of Microloans.
- **Utility bill requirements changed for Microloans:** Along with simplification of Program eligibility and data requirements for Microloans, it is necessary to simplify other requirements in the interest of reducing administrative burden to ensure that Microloans are financially viable, so removing the requirement of providing proof of service for all IOUs at the property is simplified to only require proof of service for a single IOU, typically a utility bill. Most Microloans will be for a single measure or a small project so are likely only to relate to electricity or to gas.

4. Technical, Theoretical, and/or Empirical Studies, Reports, or Documents

The Authority relied on conversations with FPEs and potentially participating finance companies as well as experience with implementing the Program. Amendments made to this section are to reduce the burden on FPEs for all finance agreements and to allow for simplified Program requirements for Microloans. Research done to inform the approach to microloans is discussed in relation to §10092.4 and §10092.6, above. In this Section, the approach to a simplified set of requirements resulted in the Authority designating many data points as not required for Microloans. The full set of data points, those that are required and those that are no longer required, was shared with finance companies and CDFIs which were interested in issuing loans under $10,000 through the Program. The Authority compared the proposed approach with the existing business practices of these microlenders and solicited input on which data requirements were best removed and which were not burdensome and could be kept as required.

5. Alternatives to the Regulations Considered by the Agency and the Agency's Reasons for Rejecting those Alternatives

The alternative approach would have been to leave all data requirements in place, which would have placed an unnecessary burden on FPEs and made a microloan pathway less feasible. In addition, §10092.8(b)(1)(A) is an alternative approach to the original regulations which required utility bills as the only form of verification of IOU service to the property.

6. Alternatives to the Proposed Regulation Action that Would Lessen any Adverse Impact on Small Business

Introducing a simplified Microloan pathway is intended specifically to help the smallest business customers access affordable financing for energy-saving upgrades. Changing the method of verification of IOU fuel delivery, as proposed, is also intended to simplify Program requirements, largely with the intent of lowering barriers to entry for small business customers.

7. Evidence Supporting Finding of No Significant Adverse Economic Impact on any Business

The Authority has determined that there will be no significant adverse economic impact on any California businesses. Participation in the Program is voluntary, and, in fact, the Authority finds that the proposed regulation may have a positive effect on businesses of contractors who perform the work. The proposed regulation may also have a positive effect on the state's economy and environment generally because of the increased economic activity and energy conservation due to the Financing Customer's investment in Energy Efficient improvements for their businesses.

**§10092.10 CLAIMS**

1. Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is Intended to Address.

A core feature of the Program is to leverage limited IOU ratepayer Public Purpose Program funds for credit enhancement in the form of a loss reserve to provide incentives to lenders to extend or improve credit terms for Energy Efficiency projects with private capital. For the credit enhancements to have the desired effect, the funds in Loss Reserve Accounts must be accessible to Finance Providers participating in the Program to cover losses incurred from defaults and charge-offs.

2. Specific Purpose of the Regulation

**§10092.10(e)(1)(B):** The requirement to report whether or not enforcement proceedings have commenced is clarified to only be required in cases where the Enrolled Financing Agreement is secured. Redundant text in §10092.10(e)(2), is struck.

**§10092.10(e)(1)(E):** "The date of the Charge-off" is added to inform staff when a Finance Provider charges off some, or all, of its outstanding principal due to an Eligible Commercial Financing Customer's debt.

3. Necessity

**§10092.10(e)(1)(E):** this provision is needed by Staff to know the date that a Finance Provider Entity charged off a financing agreement when a claim is submitted to ensure compliance with the Program guidelines of claim submission within 180 days of charge-off.

4. Technical, Theoretical, and/or Empirical Studies, Reports, or Documents

The Authority relied on experts from both public and private sectors, and rules and regulations for similar programs in California and other states to inform the changes made in this section. In addition, the Authority relied on direct discussions with current and former staff from other states or programs with similar programs. Also, the Authority considered input from the current finance partners to capture their input on project financing.

5. Alternatives to the Regulations Considered by the Agency and the Agency's Reasons for Rejecting those Alternatives

The Authority finds that no alternatives it has considered would be either more effective in carrying out the purpose of the proposed regulation or equally effective but less burdensome to affected Eligible Commercial Financing Customers, Finance Provider Entities, Participating Project Developers, Participating Contractors, or Customers.

6. Alternatives to the Proposed Regulation Action that Would Lessen any Adverse Impact on Small Business

The Authority has not identified any alternatives nor have any alternatives otherwise been identified and brought to the attention of the Authority that would lessen any adverse impact on small businesses. Program participation is voluntary.

7. Evidence Supporting Finding of No Significant Adverse Economic Impact on any Business

The Authority has determined that there will be no significant adverse economic impact on any California businesses. Participation in the Program is voluntary, and, in fact, the Authority finds that the

proposed regulation may have a positive effect on businesses of contractors who perform the work. The proposed regulation may also have a positive effect on the state's economy and environment generally because of the increased economic activity and energy conservation due to the Financing Customer's investment in Energy Efficient improvements for their businesses.

**§10092.12 REPORTING**

1. Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is Intended to Address.

The CPUC Decision states that "ongoing data collection on Program participants, project characteristics, project outcomes, and repayment results" are "essential to be able to test the value of various features of the authorized financing pilots." The Authority monitors the repayment performance by requiring enrolled Finance Provider Entities to provide regular monthly reports on all Enrolled Financing Agreements.

To make participation in the Program less burdensome for Finance Provider Entities and to increase FPE interest in the Program, there is a need to simplify the reporting of data. Additionally, the Authority has identified data that is important to the Authority to identify the benefit of the loss reserve and for monitoring Program activity. Changes are made to support these goals.

2. Specific Purpose of the Regulation

- **§10092.12(b)(1):** "Financing ID" is added as a required data point for efficient reference to each financing agreement.
- **§10092.12(b)(2) and (6)-(8):** Monthly reporting data points for changes to maturity date or contractual end date, payment amount, and/or interest rate; Date(s) and amount(s) of any charge-off(s) and whether enforcement proceedings have begun; Any anticipated losses and whether acceleration notices have been sent; and Amount of any recoveries or proceeds from charged-off financings are removed.
- **§10092.12(c):** This provision is modified to note that after a Finance Provider has charged off an account, it no longer needs to provide monthly data on that account.
- **§10092.12(e), (f)**(formerly)**:** Additional data points are added as requirements for Finance Provider Entities to provide upon request from the Authority. These data points include description of any promotions or other noteworthy patterns of activities and changes in interest rates for the appropriate comparable products of the FPE (offered outside the Program) for the purpose of helping the Authority determine ongoing benefits to borrowers that result from the loss reserve. Data points for the number of financing applications received during the reporting period and Number of applications approved during the reporting period are changed to be "upon request".

3. Necessity

- **§10092.12(b)(1):** A unique identifier, either the Finance Provider Entity's or that of the Program, needs to be provided in order to efficiently reference each financing agreement.
- **§10092.12(b)(2) and (6) - (8):** Finance Provider Entities have expressed a desire to automate monthly reports required by the Program. Staff has responded to this feedback by removing the requirement to report changes to payment amounts and interest rates as it was determined that changes happen rarely and should they occur, provide little value as data to the Program. The data points related to charge-offs are already reported as part of the claims process, should a charge-off occur, and are not needed to be provided twice.

- **§10092.12(c):** The Regulations are updated to clarify that after reporting the initial charge-off, Participating Finance Provider Entities do not have to report monthly on the status of a charged-off agreement because the Authority can track that agreement as charged-off. If a Finance Provider Entity receives a recovery, it will report on that recovery as required by the Regulations.

- **§10092.12(e), (f)** (formerly): Previously subsection (f) required monthly reporting on the number of applications received and approved by the Finance Provider Entity for GoGreen Business. These data points are being changed to be supplied upon request, putting the burden on the Authority to request the data as Participating Finance Entities described the desire to respond to a monthly survey or request, as opposed to needing to initiate the reporting of these points. The Description of any promotions or other noteworthy patterns or activities is added to help the Authority gauge the effectiveness of statewide marketing efforts as well as gauge the extent of Finance Provider Entity marketing efforts. Changes in interest rates for appropriate comparable products not enrolled in the Program is being added to help the Authority determine the ongoing benefits to borrowers that result from the loss reserve.

4. Technical, Theoretical, and/or Empirical Studies, Reports, or Documents

These amendments are the result of input from Participating Finance Provider Entities that the reporting requirements for the Program are overly burdensome. FPEs would prefer to automate these reports, which is the approach intended to be enabled by eliminating several of the required data points.

5. Alternatives to the Regulations Considered by the Agency and the Agency's Reasons for Rejecting those Alternatives

This approach is an alternative to the more extensive reporting requirements required by existing regulations, and is being implemented due to input from Participating Finance Provider Entities.

6. Alternatives to the Proposed Regulation Action that Would Lessen any Adverse Impact on Small Business

This section has no direct bearing on small businesses or their ability to qualify for financing through the Program.

7. Evidence Supporting Finding of No Significant Adverse Economic Impact on any Business

The Authority has determined that there will be no significant adverse economic impact on any California businesses. Participation in the Program is voluntary, and, in fact, the Authority finds that the proposed regulation may have a positive effect on businesses of contractors who perform the work. The proposed regulation may also have a positive effect on the state's economy and environment generally because of the increased economic activity and energy conservation due to the Financing Customer's investment in Energy Efficient improvements for their businesses.

**§10092.13 CALIFORNIA HUB FOR ENERGY EFFICIENCY FINANCING PRIVACY RIGHTS DISCLOSURE**

1. Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is Intended to Address.

The CPUC Decision states that "ongoing data collection on program participation, project characteristics, project outcomes, and repayment results" are "essential to be able to test the value of various features of the authorized financing pilots." Through participation in the Program, the Authority will necessarily come into possession of personally identifiable personal and/or business information, including credit scores, payment history, and details about Projects and financing agreements. State and federal laws protect the individual's right to control the privacy of one's personal information, so it is imperative that the Authority inform the customer of their rights and obtain permission to collect this data. Certain disclosures and utility account information are also required under the Authority's contractual agreements with the CPUC and IOUs.

2. Specific Purpose of the Regulation

- The opening paragraph of this Section is being stricken as this text was originally included as guidance for readers of the regulations. This text is not actually included in the CHEEF Privacy Rights Disclosure and is redundant with the rest of this Section.
- **§10092.13(f)**: The purpose of amending this provision is to define the effective term of the Privacy Rights Disclosure by specifying a period of data retention and release.

3. Necessity

- The opening paragraph is being stricken as redundant.
- **§10092.13(f)** The necessity of modifications to this provision informs the customer that the term of the Privacy Rights Disclosure lasts through the term of their financing agreement. This is to bring regulations into compliance with CA Civil Code §1798.24 which requires a time limit to be established.

4. Technical, Theoretical, and/or Empirical Studies, Reports, or Documents

The Authority relied on CA Civil Code §1798.24 for the substantive change to this Section.

5. Alternatives to the Regulations Considered by the Agency and the Agency's Reasons for Rejecting those Alternatives

The alternative would be failure to comply with CA Civil Code, so was not considered.

6. Alternatives to the Proposed Regulation Action that Would Lessen any Adverse Impact on Small Business

This change has no impact on Small Business.

7. Evidence Supporting Finding of No Significant Adverse Economic Impact on any Business

Adding a duration to the CHEEF Privacy Rights Disclosure has no economic impact on any business.

**§10092.14 ENERGY SAVING MEASURE LIST**

1. Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is Intended to Address.

This purpose of this section is to provide a list of Energy Saving Measures (ESMs) that are pre-approved by the Authority for installation under the Program through the ESM List Method. Having a clear and publicly vetted Energy Saving Measure List ensures that installations eligible for the Program are helping to achieve energy savings and gives users standardization across regions and clarity as to what is pre-approved under the Program. Updates are being made to add new measures to the list, modify certain measures to be eligible for self-install, to clarify requirements and to improve readability and organization.

2. Specific Purpose of the Regulation

Several measures are being added to the list in response to input from contractors, distributors, and other interested parties in the energy efficiency marketplace. Additionally, several ESMs are modified to be eligible for self-installation. Several ESMs have been updated to include other common installations, to clarify the language, or to bring the measures more in line with industry standards. Finally, changes to the list of pre-approved measures have been made for clarification for possible energy sources. Several measures are being relocated within the table to make the list readable in alphabetical order.

3. Necessity

New measures are being added in response to contractor or Project Developer request for efficient technology to be made eligible for financing. Because the Program is IOU-ratepayer funded, it is important the Program support the types of technology included in the IOU energy efficiency programs, so additional measures are being included. In each case, the Authority evaluated whether or not the measure would likely save energy in the vast majority of use cases. Wherever installation is straightforward, safe and likely to yield energy savings, measures are being made eligible for self-installation because it is much more cost-effective for small businesses to install measures without hiring a professional; otherwise energy upgrades can be prohibitively expensive. In some cases, it is necessary to remove or clarify installation requirements to remain current with technology. Specific necessity is provided for each measure below:

- **Agriculture - Automatic Pump Shut-off Sensor:** This measure is being made eligible for self-install since agriculture facilities are likely to have experienced staff who can perform installations, and they can legally do so via the CSLB exemption for owner-builder
- **Agriculture - Dehumidification System using Solid or Liquid Desiccant:** This measure is being added since it has been identified in studies and evaluations as an energy saving alternative to traditional dehumidification equipment. This measure has also been proposed for inclusion in Title 24-2022.
- **Agriculture - Dehumidification System with On-site Heat Recovery:** This measure is being added since it has been identified in studies and evaluations as an energy saving alternative to traditional dehumidification equipment. This measure has also been proposed for inclusion in Title 24-2022.
- **Agriculture - Greenhouse Energy Curtain:** This measure is being added since it has been previously identified by at least one of the IOUs as an energy savings measure; the Authority is making it eligible statewide.

- **Agriculture - Heat Recovery:** This measure is being made eligible for self-install since agriculture facilities are likely to have experienced staff who can perform installations, and they can legally do so via the CSLB exemption for owner-builders.
- **Agriculture - High Efficiency Booster or Well Pump:** "High efficiency" is being added to the measure name to clearly designation the measure as an efficient option and to be consistent with the agriculture ventilation fan measure. This measure is being made eligible for self-install since agriculture facilities are likely to have experienced staff who can perform installations, and they can legally do so via the CSLB exemption for owner-builders.
- **Agriculture - High Efficiency Irrigation Pump:** "High efficiency" is being added to the measure name to clearly designation the measure as an efficient option and to be consistent with the agriculture ventilation fan measure. This measure is being made eligible for self-install since agriculture facilities are likely to have experienced staff who can perform installations, and they can legally do so via the CSLB exemption for owner-builders.
- **Agriculture - High Efficiency Ventilation Fan:** This measure is being made eligible for self-install since agriculture facilities are likely to have experienced staff who can perform installations, and they can legally do so via the CSLB exemption for owner-builders.
- **Agriculture – Plate Cooler:** This measure is being made eligible for self-install since agriculture facilities are likely to have experienced staff who can perform installations, and they can legally do so via the CSLB exemption for owner-builders.
- **Agriculture – Sprinkler-to-Drip Irrigation:** This measure is being made eligible for self-install since agriculture facilities are likely to have experienced staff who can perform installations, and they can legally do so via the CSLB exemption for owner-builders.
- **Agriculture - VFD on Booster or Well Pump Motor:** This measure is being made eligible for self-install since agriculture facilities are likely to have experienced staff who can perform installations, and they can legally do so via the CSLB exemption for owner-builders.
- **Agriculture - VFD on Pump or Fan Motor:** This measure is being made eligible for self-install since agriculture facilities are likely to have experienced staff who can perform installations, and they can legally do so via the CSLB exemption for owner-builders.
- **Appliances - Convection Electric Oven, Convection Gas Oven:** These measures are being added since convection ovens are estimated to be 20% more efficient than standard ovens, based on information from the U.S. Department of Energy. Convection ovens require less time and lower temperatures to cook food compared to standard ovens.
- **Appliances - Induction Range or Cooktop:** This measure is being added since induction cooktops can save energy compared to electric ranges according to prior studies by DOE and ACEEE.
- **Appliances - Range Hood:** This measure is being added since range hoods certified by ENERGY STAR use 70% less energy compared to standard models, according to the EPA. ENERGY STAR certified products are widely available. This measure is not eligible for self-install since a licensed contractor is required for commercial applications, and performance may be affected by non-professional installation in homes.
- **Appliances - Residential In-Unit Clothes Washer, Dishwasher:** These measures were previously split by fuel type to accurately capture savings, but this this is not realistic as the source of water

heating (electric or gas) is subject to change as more businesses move to electric heat pump water heating. The measures are being combined into a single measure for both fuel types to simplify regulatory language and data reporting by contractors.

- **Building Envelope - Cool Roof:** The CRRC certification requirement for this measure is being removed since this is a Title 24 requirement and code compliance is an overall Program requirement.

- **Building Envelope - Windows/Glass Doors:** This measure is being expanded to include glass doors as upgrading glass doors also saves energy.

- **Data Centers - Aisle Containment, Aisle Layout Optimization, Server Consolidation, Server Virtualization:** These measures are being made eligible for self-install since Participating Contractors are unlikely to have this specialty and data centers may have experienced staff who can perform installations.

- **HVAC - Air Filter Sensor or Automatic Filter Replacement, Air Filter Alarm or Sensor, Automatic Filter Replacement:** The previous measure, Air Filter Sensor or Automatic Filter Replacement, is being split out to separate measures for a greater level of refinement in capturing what was installed. Automatic Filter Replacement is being made eligible for self-install since businesses can legally install this device and performance is unlikely to be affected by non-professional installation.

- **HVAC - Air Filter Upgrade – HEPA, Air Filter Upgrade – MERV:** This measure is being added to ensure that energy savings are possible, by bundling with an ECM fan motor and a filter alarm/sensor, when a customer chooses to upgrade air filtration. An ECM motor saves energy relative to a PSC motor and can adjust its speed to maintain airflow despite the increased pressure drop caused by the filter upgrade. A filter alarm or sensor ensures that the homeowner or building operator is aware of the need for replacement when the filter is dirty. A dirty filter can negatively affect the energy performance of an HVAC system.

- **HVAC - Air-Source or Ground-Source Heat Pump:** Gas fuel source eligibility is being removed since that was never the intention of the measure.

- **HVAC - Dedicated Outside Air System (DOAS):** This measure is being added since it has been identified in studies and evaluations as an energy saving alternative to traditional rooftop unit ventilation strategies.

- **HVAC - Diagnostic or Fault Detection Alert Systems:** This measure is being added since a diagnostic or fault detection system can notify a building operator or homeowner when issues arise with HVAC systems in order to keep equipment operating at the highest level of performance.

- **HVAC - Duct Insulation:** This measure made eligible for self-install since homeowners and businesses can legally install duct insulation and performance is unlikely to be affected by non-professional installation.

- **HVAC - Duct Sealing (Existing), HVAC - Duct Sealing (New), HVAC - Duct Sealing:** This is a non-substantive change as both new and existing duct sealing still qualify under this combined measure. The change is being made for simplicity of regulations language.

- **HVAC - Duct Sizing or Optimization:** This measure is being added since poorly sized supply and return ducts can negatively affect HVAC system performance. Duct sizing/optimization can be performed as a stand-alone measure, often without modification to the HVAC equipment, or as part of an overall HVAC upgrade.
- **HVAC - Furnace Fan Brushless DC Motor, ECM Furnace Fan Motor:** The name for this existing measure is being changed to use the more recognized term “ECM.” The requirement for a Brushless Permanent Magnet or ECM is being removed since ECM is part of the measure name and BPM is synonymous.
- **HVAC - Furnace - Residential In-Unit:** The ENERGY STAR requirement is being removed as a requirement since the ENERGY STAR certification is limited to condensing furnaces which require a condensate drain and not all sites will have access to a drain.
- **HVAC - Hotel Guest Room Occupancy Temperature Control:** This measure is being made eligible for self-install since a permit is not likely required, there is no safety concern, and energy performance is not dependent on professional installation.
- **HVAC - Pipe Insulation, HVAC Pipe Insulation:** This measure is being added since it has been identified in studies and evaluations as an energy saving measure, adding the word “HVAC” to distinguish from water pipe insulation. The measure is also being made eligible for self-install since homeowners and businesses can legally and easily install pipe insulation and performance is unlikely to be affected by non-professional installation.
- **HVAC - Radiative Cooling:** This measure is being added since it has been identified in studies and evaluations as an energy saving measure. Radiative cooling reduces the load on the compressor and condenser by radiating heat into space, even during daytime.
- **HVAC - Residential In-Unit Wall Furnace, Residential In-Unit Wall Furnace (Fan-type), Residential In-Unit Wall Furnace (Gravity):** Two separate measures are being merged into Residential In-Unit Wall Furnace for simplicity.
- **Industrial - Compressed Air Pressure Reduction:** This measure is being made eligible for self-install since a permit is not likely required, there is no safety concern, and energy performance is not dependent on professional installation.
- **Industrial - Premium Efficiency Motor:** The requirement is being changed from "Exceed EISA 2007" to "NEMA Premium® rated motor"; the new standard aligns with the existing requirement but states it in a way that is more easily recognized by industry professionals.
- **Lighting - LED Horticultural Light Fixture, LED Horticultural Hard-wired Light Fixture, LED Horticultural Plug-in Light Fixture or Replacement Lamp:** This measure is being modified to limit eligibility to hard-wired equipment that requires a licensed contractor for installation. A separate measure has been created for corded horticultural lighting that can be self-installed.
- **Lighting - LED Linear Replacement Lamp (TLED) - Type B and C:** This measure’s name is being changed from “or” to “and” to match regulations style.
- **Lighting - LED Tape Lighting:** This measure is being added since LED tape lighting is a common and popular lighting measure that can save energy versus baseline products such as halogen puck lights, halogen rope light, and linear fluorescent.

- **Other – Commercial Laundry - Clothes Washer (Electric Hot Water), Clothes Washer (Gas Hot Water):** These new measures are being added since they have been previously identified by at least one of the IOUs as an energy savings measure; the Authority is making it eligible statewide. These measures are delineated by water heating fuel source to capture savings effectively.
- **Other – Commercial Laundry - Dryer Moisture Sensor Retrofit (Electric), Dryer Moisture Sensor Retrofit (Gas):** This measure is being added since it has been previously identified by at least one of the IOUs as an energy savings measure; the Authority is making it eligible statewide. The measure is delineated by water heating fuel source to capture savings effectively.
- **Other – Commercial Laundry - Modulating Gas Valve:** This measure is being added since it has been previously identified by at least one of the IOUs as an energy savings measure; the Authority is making it eligible statewide.
- **Other – Commercial Laundry - Ozone System (Electric Hot Water), Ozone System (Gas Hot Water):** These measures are being recategorized under "Other" to align with the new commercial laundry measures.
- **Other – Energy Measurement, Metering, or Monitoring Equipment:** This measure is being made eligible for self-install since a permit is not likely required, there is no safety concern, and energy performance is not dependent on professional installation.
- **Other – IOU/REN/CCA Deemed Rebate – Other, Other Measures Qualifying Through IOU/REN/CCA Programs:** This existing measure is being revised to clarify that eligibility is based on qualification through IOU/REN/CCA programs, but a rebate is not required.
- **Other – Other Measures Qualifying Through IOU/REN/CCA Programs - Self-Install:** This new measure is being added as a complement to the existing IOU/REN/CCA measure (OT-REBA) to allow for self-installation when permitted by an IOU/REN/CCA program.
- **Pool Products - Gas Pool Water Heater, Heat Pump Pool Water Heater:** The ENERGY STAR requirement is being removed since there is not an ENERGY STAR standard for pool heaters.
- **Refrigeration - Add Insulation to Refrigerant Lines or Storage Tanks:** This measure is being made eligible for self-install since a permit is not likely required, there is no safety concern, and energy performance is not dependent on professional installation.
- **Refrigeration - Evaporator Fan Brushless DC Motor:** The requirement for the motor to be BPM or ECM is being removed since that requirement is redundant and synonymous with the measure name of a "Brushless DC Motor"
- **Refrigeration - Evaporator Fan Permanent Magnet Synchronous Motor (PMSM):** This new measure is being added since it has been identified in studies and evaluations as an energy saving alternative to traditional evaporator fan motors.
- **Refrigeration - Laboratory Grade Refrigerator or Freezer:** This measure is being added since it has been previously identified by at least one of the IOUs as an energy savings measure; the Authority is making it eligible statewide.
- **Refrigeration - Refrigeration Tune-up and Optimization:** This measure is being added since it has been previously identified by at least one of the IOUs as an energy savings measure; the

Authority is making it eligible statewide. This measure is a refrigeration complement to the existing HVAC Tune-up and Optimization.

- **Refrigeration - Variable Refrigerant Flow (VRF):** This measure is being deactivated as VRF only applies to HVAC.
- **Water Heating - Faucet Aerator (Electric Hot Water), Faucet Aerator (Gas Hot Water), Faucet Aerator:** These measures were previously split by fuel type to accurately capture savings, but this this is not realistic as the source of water heating (electric or gas) is subject to change as more businesses move to electric heat pump water heating. The measures are being combined into a single measure for both fuel types to simplify regulatory language and data reporting by contractors.
- **Water Heating - Faucet Laminar Flow Restrictor (Electric Hot Water), Faucet Laminar Flow Restrictor (Gas Hot Water), Faucet Laminar Flow Restrictor:** These measures were previously split by fuel type to accurately capture savings, but this this is not realistic as the source of water heating (electric or gas) is subject to change as more businesses move to electric heat pump water heating. The measures are being combined into a single measure for both fuel types to simplify regulatory language and data reporting by contractors.
- **Water Heating - Recirculating Hot Water Pump Control:** This new measure is being added since it has been previously identified by at least one of the IOUs as an energy savings measure; the Authority is making it eligible statewide.
- **Water Heating - Shower Head - Low Flow (Electric Hot Water), Shower Head - Low Flow (Gas Hot Water), Shower Head - Low Flow:** These measures were previously split by fuel type to accurately capture savings, but this this is not realistic as the source of water heating (electric or gas) is subject to change as more businesses move to electric heat pump water heating. The measures are being combined into a single measure for both fuel types to simplify regulatory language and data reporting by contractors.
- **Water Heating - Ozone Laundry System (Electric Hot Water), Ozone Laundry System (Gas Hot Water):** These measures are being recategorized under "Other" to align with the new commercial laundry measures.
- **Water Heating - Shower Thermostatic Valve (Electric Hot Water), Shower Thermostatic Valve (Gas Hot Water), Shower Thermostatic Valve:** These measures were previously split by fuel type to accurately capture savings, but this this is not realistic as the source of water heating (electric or gas) is subject to change as more businesses move to electric heat pump water heating. The measures are being combined into a single measure for both fuel types to simplify regulatory language and data reporting by contractors.
- **Water Heating - Tank Insulation (Electric Hot Water), Tank Insulation (Gas Hot Water), Tank Insulation:** These measures were previously split by fuel type to accurately capture savings, but this this is not realistic as the source of water heating (electric or gas) is subject to change as more businesses move to electric heat pump water heating. The measures are being combined into a single measure for both fuel types to simplify regulatory language and data reporting by contractors.
- **Water Heating - Water Pipe Insulation:** This new measure is being added as a refinement of the Pipe Insulation measure. This new measure covers domestic hot water pipes for residential and

commercial, while Pipe Insulation addressed chilled and heated water pipes for commercial space heating. Hot water pipe insulation is known to conserve energy versus an uninsulated pipe.

4. Technical, Theoretical, and/or Empirical Studies, Reports, or Documents

Suggestions for additions to the ESM List came from contractors, project developers, equipment distributors, and other industry professionals. Some changes came from industry input on the Authority's residential program and were incorporated into the commercial program. Technical reports and documents relied upon include: California's Title 24 and Title 21 code requirements, ENERGY STAR research and requirements, the CPUC's Database for Energy Efficiency Resources (DEER Database), Design Lights Consortium qualified products list, IOU deemed rebate catalogues and other energy efficiency Program lists.

5. Alternatives to the Regulations Considered by the Agency and the Agency's Reasons for Rejecting those Alternatives

The Authority's initial approach evaluated measures on three criteria: if it can be installed safely, if it can be installed without risk to energy savings, and if a contractor's license to install. The Authority considered a broader approach to self-installation eligibility which would have allowed for several more measures to qualify for installation by a property owner who may legally act as a contractor for installations on their own property. However, this approach was rejected as this approach would remove the role of the Participating Contractor and the associated accountability, data provision, and certifications.

6. Alternatives to the Proposed Regulation Action that Would Lessen any Adverse Impact on Small Business

Broader eligibility for self-installation allows small business owners more affordable options to upgrade their property and save energy by removing the cost of a professional installer where such is not needed.

7. Evidence Supporting Finding of No Significant Adverse Economic Impact on any Business

The Authority has determined that there will be no significant adverse economic impact on any California businesses. Participation in the Program is voluntary, and, in fact, the Authority finds that the proposed regulation may have a positive effect on businesses of contractors who perform the work. In the case of these modifications, specifically, businesses will be able to include a wider variety of energy efficiency measures in their projects. The proposed regulation may also have a positive effect on the state's economy and environment generally because of the increased economic activity and energy conservation due to the Financing Customer's investment in Energy Efficient improvements for their businesses.

§**10092.15 ON-BILL REPAYMENT**

1. Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is Intended to Address.

On-Bill Repayment (OBR) is a mechanism by which a utility customer repays third party private capital financing charges when they pay their monthly utility bill. OBR was authorized in CPUC Decision D.13.09.044 for small businesses, affordable multi-family, and non-residential/public buildings. Including this feature as an option in the GoGreen Business Program for customers to avoid making an additional monthly payment and to address their energy improvement costs through their utility bill is intended to attract additional business owners to save energy and additional finance company participation.

Through these regulations, the Authority sets the guidelines for, and provides a centralized, statewide hub for multiple finance companies to receive payments through bills of all four IOUs. This section establishes additional data submission and finance agreement eligibility requirements of Participating Finance Provider Entities beyond the basic program requirements described in the rest of the regulations. It also specifies the obligations of the Authority regarding submission of OBR enrollments to IOUs and reporting to Participating Finance Entities. Further, this section defines the function of the Operational Reserve Fund (ORF) to protect repayment streams to Participating Finance Provider Entities in case of delayed bills or returned payments. This section includes eligibility requirements for potential OBR customers and the reasons that a customer may be removed from OBR.

2. Specific Purpose of the Regulation.

The purpose for specific provisions of §10092.15 are as follows:

- **§10092.15(a)(1)**: This provision clarifies which IOU will be responsible for billing when a customer receives fuel delivery from more than one IOU by assigning it to the IOU whose fuel is related to the ESM(s) with the greatest installed costs.
- **§10092.15(a)(2)**: These provisions establish the requirements for a customer's IOU account in order to be eligible for OBR.
- **§10092.15(a)(2)(A)-(B)***:* These provisions establish that a customer's bill must be current and not in payment arrangements.
- **§10092.15(a)(2)(C)**: This provision's purpose is to clarify that enrollment in OBR is only available to commercial and market-rate multifamily customers.
- **§10092.15(a)(2)(D)**: The purpose of this provision is to assure that customers receive monthly IOU bills so that Finance Provider Entities can bill monthly finance charges.
- **§10092.15(a)(2)(E)**: This provision allows a financing agreement for installation of ESMs at multiple properties to qualify for OBR if all properties are covered by a single utility bill so that the financing agreement be repaid with a single monthly payment.
- **§10092.15(a)(3)**: These provisions establish eligibility requirements related to a customer's financing agreement.
- **§10092.15(a)(3)(A)**: This provision requires the IOU customer be named as a party on the financing agreement. This establishes the IOU customer's connection to the financing and its repayment through OBR. As IOUs can only bill their customers, this requirement ensures that the IOU customer is a party to the financing transaction.

- **§10092.15(a)(3)(B)**: These provisions set limits on the types of installations that may be financed and repaid through OBR so that the larger part of the charges are energy-related. As the Claim-Eligible Financed Amount is limited to $1MM of which no more than 30% can be Non-ESMs, this limits the costs of installations which are not energy-related which may be repaid through OBR. Additional ESMs and Distributed Generation may be included, as these are energy-related costs.

- **§10092.15(a)(4)**: This provision requires the IOU customer to complete an Authorization to Add Charges to the Utility Bill prior to an IOU placing charges on the customer's utility bill.

- **§10092.15(b)**: These provisions define the data points required by the Authority to direct the correct financing charge amount to be placed on the IOU customer's utility bill.

- **§10092.15(c)(1)-(4)**: These provisions define the Authority's obligations to the Participating Finance Provider Entities relating to timing of communication around the placement, removal, and modification of the OBR Total Charge on an OBR Customer's IOU bill.

- **§10092.15(d)(1)**: This provision sets expectations for Participating Finance Provider Entities relating to the timeline for an OBR Customer to begin receiving and repaying their financing charge on their IOU bill as it may be influenced by factors including variations in IOU billing cycle intervals. This may lead to a period of time between the OBR Approval Date and financing charges appearing on the customer's bill.

- **§10092.15(d)(2)**: This provision defines the specific length of time that a financing agreement can be repaid through OBR as 15 years.

- **§10092.15(d)(3)**: This provision aligns regulations with the OBR Tariffs by prohibiting acceleration of payments through OBR, as OBR is intended to facilitate the monthly billing of energy efficiency charges. If a Finance Provider Entity needs to accelerate repayment, the financing agreement will first need to be removed from OBR.

- **§10092.15(e)(1)-(3)**: These provisions establish the conditions under which an OBR Customer's financing charge may be removed from their IOU bill, making cancellation of OBR an option for the Finance Provider Entity and granting the Authority and the IOUs power to end repayment through OBR if the customer or financing agreement is no longer eligible.

- **§10092.15(f)(1)**: This provision informs Program participants that an OBR Customer's failure to pay all the charges that appear on their utility bill, including the finance charges, may result in a utility service disconnection. This regulation is derived from the OBR Tariff.

- **§10092.15(f)(2)**: This provision informs Program participants that each IOU processes partial payments according to that IOU's Tariff. Different IOUs have different methodology to distribute partial payments between energy and financing charges.

- **§10092.15(g)**: This provision allows Participating Finance Provider Entities the ability to adjust the charge amount that appears on the utility bill on a monthly basis in accordance with specific OBR timelines.

- **§10092.15(h)**: This provision establishes the Operation Reserve Fund, administered by the Authority, as a source of funds to smooth repayment streams from customers to Participating Finance Provider Entities. The Authority will draw upon the ORF if a Delayed Bill or Returned Item (related to another Finance Provider Entity's customer) creates a shortfall in a payment to a Finance Provider Entity. The ORF constitutes a short-term advance of funds to a Finance

Provider Entity which creates an ORF Balance that must either be repaid by the Finance Provider Entity or recovered via a subsequent payment by the customer.

- **§10092.15(h)(1)(A)**: This provision defines the use of the ORF in preventing an interruption in repayment streams through OBR due to delays in IOU billing systems and establishes that such a payment becomes due from the recipient FPE.
- **§10092.15(h)(1)(B)**: This provision defines the use of the ORF in preventing an interruption in repayment streams through OBR if a Returned Item from one Finance Provider Entity's customer causes a shortfall in funds due to a different Finance Provider Entity. This provision also establishes that such a payment becomes due from the recipient FPE.
- **§10092.15(h)(1)(C)**: This provision prevents ORF payments from being issued after the 15-year period allowed for repayment through OBR. The 15-year OBR period is established in §10092.15(d)(3).
- **§10092.15(h)(2)**: This provision clarifies how an ORF Balance, incurred as the result of a Delayed Bill or Returned Item (in this case resulting from the FPE's customer's returned payment), is repaid and establishes a timeline for the Finance Provider Entity to reimburse the ORF.
- **§10092.15(h)(3)**: This provision establishes the Authority's obligation to request funds from the IOUs within 5 days if there are insufficient funds in the ORF.
- **§10092.15(i)(1)(A)-(B)**: These provisions describe additional information from Finance Provider Applicants that is specific to participation in OBR which is in addition to information required in §10092.2 for participation in the Program.
- **§10092.15(i)(1)(C)**: This provision requires a Finance Provider Applicant to provide an explanation of the public benefits resulting in participation in OBR in comparison to their typical product offerings, similar to the explanation of benefits of the Loss Reserve as required by §10092.2(c)(3)(C).
- **§10092.15(i)(1)(D)(i)**: This provision requires an acknowledgement from the Finance Provider Applicant that the Authority has no authority over, and can make no guarantees pertaining to, IOU billing systems, their Tariffs, or other processes.
- **§10092.15(i)(1)(D)(ii)**: This provision requires an acknowledgement of the Finance Provider Applicant that payments made from the ORF must be reimbursed and that ORF payments are not a loan or line of credit.
- **§10092.15(i)(1)(E)(i)**: This provision requires the certification of the Finance Provider Applicant that it must comply with the rules articulated within the relevant OBR Tariff.
- **§10092.15(i)(1)(E)(ii)**: This provision requires the certification of the Finance Provider Applicant that it agrees to repay any ORF Balance due.
- **§10092.15(i)(1)(E)(iii)**: This provision requires the certification of the Finance Provider Applicant that it understands there may be delay in billing cycles before financing charges appear on the IOU bill.
- **§10092.15(i)(1)(E)(iv)**: This provision requires the certification of the Finance Provider Applicant that it must not accelerate any financing payments through OBR.

- **§10092.15(i)(1)(F)**: This provision requires the FPA's covenant that the IOUs have no liability for OBR and payments made thereby.

- **§10092.15(i)(2)**: This provision requires that claims submitted by a Finance Provider Entity are repaid net of any ORF Balance owed by that Finance Provider Entity.

3. Necessity

The necessity for specific provisions of §10092.15 are included below:

- **§10092.15(a)(1)**: This provision is necessary to determine on which IOU bill to include financing charges when a customer is served by more than one IOU. Utilizing the installed costs as they relate to fuel source was determined to be the simplest and most efficient method of determining on which IOU bill to include charges. Additionally, the utilities wanted the financing charges connected to the bill for fuel service that was mostly likely to result in energy savings from the installation.

- **§10092.15(a)(2)**: This provision is necessary to establish a clear set of eligibility requirements related to a customer's IOU account.

- **§10092.15(a)(2)(A)-(B)**: These provisions are necessary to prevent customers who are having difficulty keeping current with their regularly occurring IOU charges from adding additional financing charges to their bill because it may increase the likelihood of missing a payment that could result in a service disconnection.

- **§10092.15(a)(2)(C)**: This provision is necessary to restrict participation in OBR to only commercial and market-rate multifamily customers, in accordance with the IOU tariffs. Customers who may be utilizing their homes for business activities and who may take out a commercial loan are not eligible because their home is considered a residential account.

- **§10092.15(a)(2)(D)**: This provision is necessary to ensure that a customer participating in OBR is billed on a monthly basis so that the Finance Provider Entity can bill monthly finance charges. Some IOU customers, such as those who may have solar installations, do not receive monthly utility bills, which would prevent monthly financing charges being paid through their bill.

- **§10092.15(a)(2)(E)**: This provision is necessary to allow financing charges for energy efficiency upgrades conducted at multiple locations to appear on one IOU bill and for those charges to be paid with one payment from the customer. Installations at multiple properties are allowed to be combined in a single financing agreement, but only if the customer receives a single monthly bill from their utility. Dividing charges amongst multiple property-specific utility bills would be impractical and very difficult to automate.

- **§10092.15(a)(3)**: This provision is necessary to establish a clear set of eligibility requirements related to a customer's financing agreement.

- **§10092.15(a)(3)(A)**: This provision is necessary to align with the IOU's understanding of their collections authority which is to collect financing charges on the bills of their customers. Requiring the IOU customer to be named as a party on the financing agreement ensures that the IOU customer is tied to the financing agreement and its repayment through OBR. IOUs can only bill their customers and this requirement ensures that the IOU customer is a party to the financing transaction.

- **§10092.15(a)(3)(B)**: This provision is necessary to set limits on the composition of project costs that can be repaid through OBR. Decision 13.09.044 recommends that the Claim-Eligible Financed Amount be eligible for repayment through OBR, including allowing up to 30% of this amount to be for non-energy measures. The Decision also indicates that charges repaid through OBR should be sufficiently related to energy savings. Therefore, permitting additional ESMs beyond the Claim-Eligible Financed Amount to be eligible for repayment through OBR increases the amount of savings possible per financing. Together, these maximize potential for energy savings while still allowing for the non-energy measures provided for in the Decision. Additionally, CPUC Decision 17-03-026 states that costs for Distributed Generation are eligible to be repaid through OBR so the provision incorporates those costs.

- **§10092.15(a)(4)**: This provision is necessary to require the OBR customer to complete the Authorization to Add Charges to the Utility Bill, as specified in the IOU OBR tariffs. The IOUs require this document to be signed by the IOU customer prior to an IOU placing financing charges on their utility bill.

- **§10092.15(b)(1)-(4)**: These provisions are necessary to obtain data points needed by the Authority to direct the correct financing charge amount to be placed on the correct IOU customer's utility bill.

- **§10092.15(c)(1)-(4)**: These provisions are necessary to define the Authority's obligations to Participating Finance Provider Entities relating to the timing of communications for the placement, removal, and modification of the OBR Total Charge to appear on an OBR Customer's IOU bill. Defining reasonable response times on the part of the Authority allows the FPEs to estimate when they will receive their initial repayments and to plan for communication of changes.

- **§10092.15(d)(1)**: This provision is necessary to set expectations for Participating Finance Provider Entities relating to the timeline for an OBR Customer to begin receiving and repaying their financing charge on their IOU bill. Due to factors including variations in IOU billing cycle intervals, there will be a period of time between the OBR Approval Date and financing charges appearing on the customer's bill, which under certain circumstances may take multiple utility billing cycles. It is important that the FPE understand there will be an initial delay so that they do not set the customer's initial payment due date too early, leading to the customer being late simply because of the mechanisms of OBR.

- **§10092.15(d)(2)**: This provision is necessary to define a specific length of time that a financing agreement can be repaid through OBR. The term of fifteen years allows for more flexibility to structure financing agreements so that payments are lower than the savings resulting from reduced energy usage, making these energy upgrades more financially viable for customers. Limiting the term of participation in OBR to fifteen years allows for this flexibility while not extending the term indefinitely.

- **§10092.15(d)(3)**: This provision is necessary to prevent Participating FPEs from accelerating payments through OBR, as required by the IOU OBR Tariffs. OBR is intended to facilitate the monthly billing of energy efficiency financing charges. If an FPE needs to accelerate repayment, the customer will first need to be removed from OBR.

- **§10092.15(e)(1)-(3)**: These provisions are necessary to establish the conditions under which an OBR Customer's financing charge may be removed from the IOU bill. This grants Participating

Finance Provider Entities the option to return to direct billing at their discretion and allows the Authority and the IOUs to remove a customer from OBR if the customer or the financing agreement are no longer eligible.

- **§10092.15(f)(1)**: This provision is necessary to inform Program participants that an OBR Customer's failure to pay all the charges that appear on their utility bill, including the finance charges, may result in a utility service disconnection. This regulation was derived from the IOU OBR Tariffs.

- **§10092.15(f)(2)**: This provision is necessary to inform Program participants that each IOU processes partial payments according to the relevant IOU's OBR Tariff. Each IOU has its own methodology of applying partial payments to energy or financing charges.

- **§10092.15(g)**: This provision is necessary to allow Finance Provider Entities to adjust the charge amount that appears on the utility bill on a monthly basis, in accordance with the terms of the financing agreement with their financing customer. The provision is also necessary to establish that if a FPE needs to update the monthly payment, they need to communicate the updated amount that is to appear on the customer's next bill to the Authority before the OBR Modified Charge Cutoff Date. The IOUs generate bills every month and need adequate time to change the monthly charge before bills are generate and sent.

- **§10092.15(h)**: This provision is necessary to establish an Operational Reserve Fund (ORF) to prevent delayed payments to Participating Finance Provider Entities when it is due to no fault of that FPE. Finance companies require a good deal of certainty about their repayment streams and timelines and without an ORF it is unlikely that finance companies would want to absorb the risk of payment delays. The ORF is critical to provide confidence that payments will be remitted on time, whenever a lateness is not related to a particular FPE or their customer.

- **§10092.15(h)(1)(A)**: This provision is necessary to establish that the Authority will issue payment to an FPE from the ORF in the event of a Delayed Bill. Occasionally the utilities do not generate and send bills on a customer's planned monthly billing day. This use of the ORF protects the FPE's payment stream from errors in an IOU's billing system and encourages participation in OBR. This provision is also necessary to establish that the ORF Balance must be repaid by the FPE once the bill is sent and paid and that additional payments will not be made from the ORF in the event of another Delayed Bill. The ORF is intended to protect repayment streams in the event of IOU billing system errors, not to act as a substitute repayment stream in the very unlikely event of two consecutive billing cycles being delayed.

- **§10092.15(h)(1)(B)**: This provision is necessary to establish that the Authority will issue payment to an FPE from the ORF in the event that a Returned Item from another FPE's customer causes a shortfall in available funds. The repayment transmission system that the IOUs built includes daily remittances as soon as a customer's payment posts, without waiting for funds to clear. If a customer subsequently has a returned payment, then IOU will then withhold future remittances to make itself whole. The use of the ORF in this case provides assurance that a failed payment from one FPE's customer will not disrupt payments to a separate FPE. This provision is also necessary to establish that payments made from the ORF due to a Returned Item will become due from the FPE whose customer caused the Returned Item, and that the ORF will not be used to ensure payment to an FPE whose customer's payment fails.

- **§10092.15(h)(1)(C)**: This provision is necessary to prevent ORF payments from being issued after the 15-year period allowed for repayment through OBR.

- **§10092.15(h)(2)**: This provision is necessary to clarify how an ORF Balance incurred as the result of a Delayed Bill or Returned Item may be repaid and the timeline and requirements for the Finance Provider Entity to reimburse the ORF.

- **§10092.15(h)(2)(A)**: This provision is necessary as it is important for the Authority that the FPE with the ORF balance reimburse the ORF promptly so that it may be utilized again. This provision establishes that payments made from the ORF may be reimbursed through other OBR payments made to the FPE with the outstanding ORF Balance. A payment made due to a Delayed Bill will typically be reimbursed to the ORF once normal billing resumes, but a payment made due to a Returned Item might never be reimbursed through payments from that same customer. The Authority needs the power to redirect payments owed to the FPE whose customer failed to pay to reimburse the ORF as it is the FPE's responsibility to pay.

- **§10092.15(h)(2)(B)**: This provision is necessary to establish a due date on outstanding ORF Balances which might not be recovered through redirection of other OBR payments to the FPE in the case that the FPE has no active OBR customers. This is necessary to set up the FPE to reimburse the ORF directly.

- **§10092.15(h)(2)(C)**: This provision is necessary to establish that the Authority may withhold the amount of an outstanding ORF Balance from claims due to the FPE, providing another means of making the ORF whole.

- **§10092.15(h)(2)(D)**: This provision is necessary to establish a due date on an ORF Balance resulting from a Delayed Bill in the case that the normal method of reimbursement, the customer's next regular bill, will not be available because the customer was removed from OBR. In this case, compared with a customer's returned payment, a longer time horizon is provided to the FPE for reimbursement as the bill was never sent to the customer.

- **§10092.15(h)(3)**: This provision is necessary to specify the Authority's obligations if ORF funds become depleted. The ORF is administered by the Authority but funded by the IOUs, so this provision establishes what action the Authority will take to ensure repayment streams are still protected by the ORF. It is necessary to provide assurance to FPEs that the Authority will make sure the ORF is maintained.

- **§10092.15(i)(1)(A)-(B)**: This provision is necessary for a Finance Provider Applicant to let the Authority know that they wish to participate in OBR and to indicate which applicant (the Affiliate or Primary) will fill the role of OBR Representative. It is necessary for the Authority to communicate the expectations for the OBR representative as well, so that the Finance Provider Applicant understands their obligations. These data points at application are specific to participation in OBR, and are beyond those required in §10092.2, for participation in the Program.

- **§10092.15(i)(1)(C)**: This provision is necessary for the Authority to determine the impact of a FPE's participation in OBR on the benefits they provide to customers.

- **§10092.15(i)(1)(D)(i)**: This provision is necessary to ensure FPEs are aware that the Authority has no authority over, and can make no guarantees pertaining to, IOU billing systems.

- **§10092.15(i)(1)(D)(ii)**: This provision is necessary to ensure FPEs are aware that payments made from the ORF are required to be reimbursed and clarify that ORF payments are not intended as a loan or a line of credit.

- **§10092.15(i)(1)(E)(i)**: This provision is necessary to obtain certification from a Finance Provider Applicant that it will comply with the rules articulated in the OBR Tariff.

- **§10092.15(i)(1)(E)(ii)**: These provisions are necessary to obtain a Finance Provider Applicant's certification that they will reimburse the ORF if owed. This establishes understanding that the ORF is not a grant or a loan.

- **§10092.15(i)(1)(E)(iii)**: These provisions are necessary to obtain a Finance Provider Applicant's certification that they understand that multiple IOU billing cycles may pass before financing charges appear on the IOU bill. This establishes understanding that an alternate method of collecting payment may be necessary in the interim, or that pricing of the financing may need to accommodate a delayed beginning to repayment and a customer's initial due date should not be set too early, if the FPE plans to send the initial bills through OBR.

- **§10092.15(i)(1)(E)(iv)**: These provisions are necessary to obtain a Finance Provider Applicant's certification that they will comply with the OBR tariff's requirement that OBR may not be used for accelerated payment.

- **§10092.15(i)(1)(F)**: These provisions are necessary to obtain a Finance Provider Applicant's covenant that the IOUs may not be held liable for payments made through OBR. This provision is needed to secure the IOUs' participation in OBR.

- **§10092.15(i)(2)**: This provision is necessary to ensure that claims submitted by a Finance Provider Applicant will be repaid net of any ORF Balance owed by that Finance Provider Entity. This provides the Authority with another means of reimbursing the ORF other than redirecting OBR payments.

4. <u>Technical, Theoretical, and/or Empirical Studies, Reports, or Documents</u>

The Authority relied on CPUC Decision 13-09-44 for guidance in designing the changes to the Program to allow for On-Bill Repayment. These changes were made after extensive discussions with the State's four IOUs with continued guidance from the CPUC. The Authority consulted with the Michigan Saves program regarding their on-bill repayment programs, and also received input from the four IOUs on their experience with their own on-bill financing programs. (On bill finance relies on the utility's own capital). Program regulations were designed to align with the IOUs' On-Bill Repayment Tariffs. Additional documents relied upon included:

- CPUC Resolution E-4680. Approve amended On Bill Repayment (OBR) tariffs for Energy Efficiency finance pilots to comply with OP 11 of D.13.09.044

- CPUC Decision 15.06-008, Decision Partially Modifying Decision 13-09-044 and Resolution E-4680 Implementing Energy Efficiency Financing Pilot Programs

- CPUC Decision 15-12-002, Decision Modifying Decision 13-09-044 Implementing Energy Efficiency Financing Pilot Programs

- CPUC Decision 17-03-026, Addressing Energy Efficiency Financing Pilot Programs Originally Ordered in Decision 13-09-044

- CPUC Decision 19-08-009, Decision Modifying the Energy Efficiency Three-Prong Test Related to Fuel Substitution
- San Diego Gas and Electric Company Rule No. 43 On-Bill Repayment gas and electric Tariffs[3]
- Pacific Gas and Electric Company Rule No. 43 On-Bill Repayment gas and electric Tariffs[4]
- Southern California Edison Company Rule No. 43 On-Bill Repayment gas and electric Tariffs[5]
- Southern California Gas Company Rule No. 43 On-Bill Repayment gas Tariff[6]

5. Alternatives to the Regulations Considered by the Agency and the Agency's Reasons for Rejecting those Alternatives

Several different approaches to some of the above provisions were discussed informally with stakeholders and during several public workshops to obtain feedback on OBR over the last several years.

The Authority considered an approach in which the customer named on the utility bill not be required to be named as a party on the financing documents; this would allow for another legal entity such as a holding company to be the counterparty on the financing agreement, in line with finance company standard practice. However, the IOUs maintained that the party accountable for repayment of the financing must be a utility customer with whom they have a legal relationship, so this approach was not used. An approach using an alternative method of identifying IOU customers such as a Tax ID was also discussed but found not to mitigate the challenges described.

Initially participation in OBR was discussed as being limited to ten years to align with the time during which a claim may be filed against the loss reserve for a project financed through the Program. Comments from Participating Project Developer and an interested finance company advocated for an extension of participation on OBR to fifteen years, even with the end of the period for an eligible claim remaining at ten. This allows for a different business model on the part of contractors, project developers and finance companies which relies primarily on OBR rather than the loss reserve to sell energy-saving projects to customers and to approve financing agreements. The Authority thus included a duration of fifteen years for OBR participation in the regulations.

A request from the IOUs was to include some protections against OBR being used to pay for power generation beyond the power needed by a particular property. Generation of excess power could possibly impact IOU profits. Specific prohibitions were not included in regulations as this event seems unlikely and burdensome for the Contractor and FPE to track; the Authority will reconsider addressing this in regulations if this event occurs.

The Authority initially adopted emergency regulations preventing the FPE from directly billing a customer in the same month that the customer is billed through OBR. Conversations with FPEs related to implementing OBR revealed that this would be problematic as there is a gap between when project completion and the start of billing takes place for some FPEs and when the customer finally receives the charge through their utility bill. FPEs are not able to predict the exact timing of the initial utility bill generation and receipt by the customer nor the last bill, if they remove the financing agreement from

[3] Electric and Gas Tariffs Effective 03/21/2021
[4] Electric and Gas Tariffs Effective 04/22/2016
[5] Electric Tariff Effective 03/21/2021
Gas Tariff Effective 04/14/2021
[6] Gas Tariff Effective 03/21/2021

OBR. FPEs have relationships with their customers and are motivated to keep their customers satisfied. Rather than having a prescriptive approach limiting the ability of FPEs to reach agreement with their customers, the Authority opted to give FPEs discretion on how to collect payment in the first and last months of OBR.

6. Alternatives to the Proposed Regulation Action that Would Lessen any Adverse Impact on Small Business

No element of OBR creates adverse impact on small businesses. This feature of the Program is available to, yet entirely voluntary for small business customers. Further, the Authority has seen that Microlenders may consider OBR a more stable means of repayment, which would encourage more finance companies to participate and lead to more opportunities for financing for small business customers applying for very low financed amounts.

7. Evidence Supporting Finding of No Significant Adverse Economic Impact on any Business.

The Authority has determined that there will be no significant adverse economic impact on any California businesses. Participation in the Program is voluntary, and in fact, the Authority finds that the proposed regulation may have a positive effect on financial institutions and the businesses of contractors who perform the work. The proposed regulation may also have a positive effect on the state's economy and environment generally because of the increased economic activity and energy conservation due to the Customer's potentially larger investment in energy efficiency improvements for their businesses.

ECONOMIC IMPACT ASSESSMENT

**Creation or Elimination of Jobs and Businesses within the State of California**

The regulations are designed to establish the Program structure, provisions and the type and level of financial assistance Finance Provider Entities may obtain if accepted to participate in the Program. Existing staff will carry out these regulations, participation in the Program is voluntary, and these regulations do not place a burden on businesses within California, therefore these regulations do not affect the ability to create or eliminate jobs within the state of California.

The Authority finds that the regulations will have a positive effect on the state's economy as studies have cited access to attractive financing as a significant impediment for businesses to invest in energy upgrades. Therefore, the Authority finds there may be increased economic activity for manufacturers and installers of energy efficiency measures, finance companies who participate in the Program, and contractors and project developers who participate in the program. Additionally, businesses that make energy upgrades are likely to experience energy savings which could be reinvested into their businesses and into the state economy as a whole.

The Authority finds that the regulations may have a positive impact on 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. The Authority has not estimated the number of direct and indirect green jobs that may be created as a result of this Program.

Creation of New or Elimination of Existing Businesses within the State of California

The regulations help provide an incentive to finance companies offering credit to California small business owners and, therefore, are not anticipated to eliminate existing businesses within the State of California. The Authority finds that the proposed regulations will have a positive effect on the businesses that make use of the financing and OBR mechanism based on stakeholder comments received. The regulations are unlikely to significantly affect the creation of new businesses within the State of California.

**Expansion of Businesses or Elimination of Existing Businesses Within the State of California**

Studies have cited the need for lower cost financing as a main impediment to increasing the number of businesses investing in energy efficiency upgrades, therefore, the Authority finds there would be increased economic activity for certain businesses of project developers and contractors who conduct energy efficiency retrofits, thus potentially expanding existing businesses.

**Benefits of the Regulations**

As the amendments make the Program more attractive to finance companies, contractors, project developers, and small business borrowers, there may be additional reduction of greenhouse gas emissions and an improvement of air quality. This could benefit the state's environment and residents' health. These amendments will have no impact on worker safety. Further, the amendments may

benefit the state's fiscal health by incentivizing finance companies to enter into financing agreements and offer new products to borrowers who wish to make an energy efficiency investment.

California has aggressive energy reduction goals. A series of legislation passed in recent years, including Assembly Bill 32 (Nuñez, Chapter 488, Statutes of 2006), Assembly Bill 758 (Skinner, Chapter 470, Statutes of 2009), Senate Bill 350 (De León, Chapter 547, Statutes of 2015), and Senate Bill 100 (De León, Chapter 312, Statutes of 2018) have addressed energy efficiency issues and provided direction for establishing ambitious energy goals for the state. Additionally, in July of 2021, Governor Newsom directed the CPUC and the California Air Resources Board to accelerate California's progress to achieving carbon neutrality to 2035, in advance of the previous 2045 target.

In 2008 the California Public Utilities Commission adopted the California Long-Term Energy Efficiency Strategic Plan ("Strategic Plan"), which set forth a statewide roadmap to maximize the achievement of cost-effective energy efficiency in California's electricity and natural gas sectors from 2009 through 2020 and beyond. While the commercial sector is not restricted by lack of financial products, two of the main barriers to achieving the energy efficiency goals laid out by the Strategic Plan are the high interest rates associated with that financing and the fact that many of the financing products currently available are difficult to access.

The purpose of the Commercial Energy Efficiency Financing Program is to provide credit enhancement support for finance companies financing energy efficiency improvements. Through the use of credit enhancements, finance companies are able to mitigate risk and thus offer better rates and terms to a broader base of customers. The goals of the Program are to attract a greater amount of private capital to the energy efficiency retrofit market by mitigating risk to finance companies, to broaden the availability of financing to those who might not have been able to access it otherwise, and to address the upfront cost barrier to energy efficiency retrofit projects.

The goals of the amendments are designed to streamline aspects of the Program, allow a new Microloan pathway, reduce burden for participants to encourage participation and offer the new OBR pathway.

**Small Business:**

The proposed regulations will not have an adverse impact on small businesses in California. Participation is voluntary and designed to offer access to attractive financing that a small business otherwise may not have.