

**TITLE 4, DIVISION 13, ARTICLE 6
OF THE CALIFORNIA CODE OF
REGULATIONS**

NOTICE OF PROPOSED RULEMAKING

The California Alternative Energy and Advanced Transportation Financing Authority (the “Authority” or “CAEATFA”), organized and operating pursuant to Division 16 (commencing with section 26000) of the California Public Resources Code (the “Act”)—pursuant to the authority vested in it by the Public Resources Code Section 26009 to promulgate regulations and Public Resources Code Section 26011 to provide financial assistance to a participating party, and acting pursuant to the Memorandum of Agreement (“MOA”) between CAEATFA and the California Public Utilities Commission (“CPUC”) which sets forth the policies and procedures for establishment of a series of ratepayer-funded pilot programs as authorized and described in the initial CPUC-approved Decision 13-09-044, Decision Implementing 2013-14 Energy Efficiency Financing Pilot Programs (the “Decision”), issued September 20, 2013 and subsequent CPUC actions¹—proposes to amend the Commercial Energy Efficiency Financing Program regulations described below after considering all comments, objections, and recommendations regarding the proposed action. The Commercial Energy Efficiency Financing Program is known publicly as the “GoGreen Business Program” and is also referred to in this document as “Program.”

PUBLIC HEARING

The Authority has not scheduled a public hearing on this proposed rulemaking. However, a public hearing will be held if any interested person, or their duly authorized representative, requests a public hearing to be held relevant to the proposed rulemaking by submitting a written request to the Agency Contact Person identified in this notice no later than fifteen (15) days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representatives may submit written comments relevant to the regulations to the Authority. **The written comment period on the regulations ends on Monday, June 13, 2022.** All comments must be submitted in writing to cheef@treasurer.ca.gov by that time in order for them to be considered by the Authority.

In the event that substantial changes are made to the regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified regulations for fifteen (15) calendar days after the date on which such regulations, as changed or modified, are made available to the public pursuant to Title 1, Division 1, Chapter 1,

¹ CPUC has issued additional decisions and rulings addressing issues related to the implementation of the pilot programs, including: D. 15-06-008, D. 15-12-002, D. 17-03-026; and D.21.08.006.

Article 2, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency Contact Person identified in this notice.

AUTHORITY and REFERENCE

Authority: Public Resources Code Section 26006 and 26009.

Section 26006 and 26009 of the Public Resources Code authorizes the Authority to adopt necessary regulations relating to its authority established by the Act, and Public Resources Code 26011 establishes the authority to provide financial assistance to a participating party.

Reference: Public Resources Code Sections 26002, 26002.5, 26003(a)(3)(A), 26003(a)(6), 26003(a)(7)(A), 26003(a)(8)(A), 26011 and 26040. On September 19, 2013, the CPUC approved Decision 13-09-044 and requested the Authority act as the master administrator of the California Hub for Energy Efficiency Financing (“CHEEF”), funded by ratepayer funds collected by the four investor-owned utilities: Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company (collectively the “IOUs”). CAEATFA’s purpose is to advance the State's goals of reducing the levels of greenhouse gas emissions, increasing the deployment of sustainable and renewable energy sources, implementing measures that increase the efficiency of the use of energy, creating high quality employment opportunities, and lessening the State's dependence on fossil fuels. The Authority’s statute enables it to provide financial assistance to various participating parties that carry out eligible projects. In July 2014, CAEATFA 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.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law establishes the California Alternative Energy and Advanced Transportation Financing Authority and authorizes the Authority to provide “financial assistance” to “participating parties” for the implementation of “projects” as those terms are defined in Public Resources Code Section 26003. A Memorandum of Agreement between CAEATFA and the CPUC sets forth the policies and procedures for establishment of a series of ratepayer-funded programs as authorized and described in the CPUC-approved Decision 13-09-044, Decision Implementing 2013-14 Energy Efficiency Financing Pilot Programs, and associated governing actions (“Decision”).

The Decision established the California Hub for Energy Efficient Financing (“CHEEF”) to be administered by CAEATFA. CAEATFA was authorized to develop and implement a number of energy efficiency financing programs, intended to attract a greater amount of private capital to the energy efficiency retrofit market. The programs would make use of a credit enhancement to mitigate risk for finance companies, allowing them to offer more attractive rates and terms and to approve financing for individuals and businesses who might not be approved otherwise. The Decision also authorized on-bill repayment for several sectors including the commercial

sector. Through on-bill repayment, customers can repay energy-related finance agreements through their utility bills.

The Office of Administrative Law (“OAL”) first approved emergency regulations for the Commercial Energy Efficiency Financing Program in December 2018. Following a period of financing company and contractor enrollment, the program was launched for small business participants in May 2019. The Certificate of Compliance was completed in December 2019. The Program was initially known publicly as the “Small Business Financing Program” and, beginning in August 2021, as the “GoGreen Business Energy Financing Program” or just “GoGreen Business.”

At the beginning of 2020, GoGreen Business was starting to gain momentum with contractor and project developer enrollments when, due to the pandemic, many small businesses shut down. Additionally, investor-owned utilities (“IOUs”) paused energy efficiency program outreach that was critical for small business’ awareness of the types of upgrades they could make. Since businesses have reopened, the need for energy efficiency financing has resumed. CAEATFA had received industry feedback related to eligible measures and the need for smaller dollar financing amounts than finance companies could practically offer through the program. Further, significant progress had been made between CAEATFA and the IOUs in reaching agreement on key aspects of the on-bill repayment structure and operations. To this end, and to allow for adequate time for the regular rulemaking process, Authority staff proposed making modifications through the emergency process in May 2021.

As part of the emergency rulemaking, CAEATFA made publicly available the proposed modified emergency stakeholder regulations, held stakeholder discussions soliciting input, and conducted a virtual public workshop on May 21, 2021, followed by a 10-day public comment period. Emergency regulations were initially approved by OAL on July 19th, 2021 (OAL File No. 2021-0707-01E) with subsequent approval by OAL for readoption on December 30th, 2021 (OAL File No 2021-1221-01EE) and April 12th, 2022 (OAL File No. 2022-0405-01EE).

The proposed regulations associated with this Notice seek to make permanent most of the emergency modifications. They clarify and establish the rules necessary to implement the On-Bill Repayment (“OBR”) feature described in the CPUC-approved Decision 13-09-044. These regulations also clarify and add eligible Energy Savings Measures (“ESMs”) to the program, expand the number of Self-Installed ESMs, and establish a streamlined Microloan pathway for loans less than \$10,000. These regulations are the result of stakeholder comments obtained since implementation in 2019 as well as during the emergency rulemaking process.

Anticipated Benefits of the Proposed Action:

The On-Bill Repayment feature is intended to act as a selling point for small businesses and increase program uptake, furthering the goal of reducing energy consumption and thereby greenhouse gases. The Microloan pathway is intended to allow finance companies to effectively serve the smallest businesses in California by providing credit-enhanced financing for energy

efficient equipment, helping businesses to save money, and improving their bottom line. Changes to the Energy Saving Measures list are intended to more thoroughly represent the kinds of installations which are able to save energy and to ease restrictions on self-installation to allow small businesses a lower-cost option for energy saving projects. All these modifications are intended to drive uptake for the program and further goals of reduction in energy use. Changes to program requirements on reporting and proof of utility service are intended to simplify project submissions and make participation feasible for finance companies.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

Government Code Section 11346.5(a)(3)(D) requires that the notice of proposed rulemaking include, “[an] evaluation of whether the proposed regulation is inconsistent or incompatible with existing state regulations.” CAEATFA’s Staff reviewed the California Code of Regulations and found no existing regulations with which there might be inconsistency or incompatibility. Therefore, CAEATFA believes that the proposed regulation is neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Executive Director of CAEATFA has made the following determinations regarding the effect of the regulations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

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

Significant effect on housing costs: None.

Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: The Authority has made the determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Participation in the Program is voluntary for California businesses. For those businesses that choose to participate, they are likely to access financing at better rates and terms than they would find outside of the Program, which

provides a benefit. In fact, the Authority finds that the proposed regulation will have a positive effect on the participating customers as well as the State's economy and environment generally as a result of reducing the cost of financing, potential utility bill savings and reduction of greenhouse gases.

Effect on 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.

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

RESULTS OF ECONOMIC IMPACT ANALYSIS

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.

Creation or Elimination of California Jobs: The Authority finds that the regulations may have a positive impact on the creation of jobs within California, through manufacturers of energy efficiency measures benefitting from increased demand, contractors and project developers hired to install measures and from businesses participating in the Program who save on energy bills and are able to reinvest those savings into their businesses and hire additional workers. The Authority has not estimated the number of green jobs that may be created as a result of this Program as participation is voluntary.

Creation, or Elimination, of California Businesses: As the regulations provide an incentive to finance companies offering credit to California business owners, the elimination of businesses within California is improbable. The regulations are unlikely to significantly affect the creation of new businesses within the State of California.

Expansion of Existing Businesses in California

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 Regulation to The Health and Welfare of California Residents, Worker Safety, and The State's Environment: The goal of the Program is to increase access to financing for California businesses to invest in energy efficient upgrades, thus reducing greenhouse gas emissions and helping meet California's ambitious environmental goals.

SUMMARY OF THE PROPOSED CHANGES AND ADDITIONS

Section 10092.1. Definitions.

This section defines terms commonly used throughout the regulations and Program documents.

This section is being amended to add definitions necessary for On-Bill Repayment and the Microloan pathway.

Section 10092.3. Additional Requirements for Entities that are not Financial Institutions.

This section specifies additional program participation requirements on entities that are not regulated financial institutions.

This section is being amended to remove the requirement on proof of motor vehicle insurance.

Section 10092.4. Contractor and Project Developer Participation.

This section establishes the Participating Contractor and Participating Project Developer requirements and responsibilities in the Program.

This section is being amended to facilitate a streamlined Microloan pathway for self-installed projects and to add a requirement on retention of permitting documentation.

Section 10092.6 Eligible Financing Customers.

This section establishes the minimum credit and underwriting requirements that apply to Eligible Commercial Financing Customers.

The amendments to this section reflect the addition of the Microloan tier for financed agreements up to \$10,000 with fewer requirements than the higher tiers.

Section 10092.7 Project Eligibility.

This section details the requirements for Projects to be eligible for financing through the Program.

As the streamlined Microloan level of financing has been newly added, this section is being amended to remove the requirement for a Project Developer to be active on a self-installed project of less than \$10,000 to keep additional costs minimal. Further, it has been updated to make explicit the original intent of the types of data that may be expected of Participating Contractors and Participating Project Developers and may be required as part of the quality assurance/quality control process.

Section 10092.8. Financing Submittal and Enrollment.

The purpose of this section is to detail the full requirements for Project Eligibility, including the documentation, data, and signed certifications that must be submitted by each participant to the authority for the Eligible Financing Agreement for a Project to enroll in the Program.

This section is being amended to clarify the terms used and to consolidate the requirements for data, documentation, and certifications required for the submittal and enrollment of an eligible financing agreement. Amendments are also being made to designate certain data points as not required for the submission of Microloans. Lastly, the requirement of proof of IOU service to a property is being broadened to allow other methods of documentation than utility bills to make the program more compatible with utility program implementers.

Section 10092.10. Claims

The purpose of this section is to establish the process and terms whereby a Finance Provider Entity may claim and receive reimbursement for a loss incurred from an Eligible Commercial Financing Customer's default on an Enrolled Financing Agreement.

The section has been amended to include "The date of the Charge-off" as part of the claim application and to clarify when the data point of "Whether or not enforcement proceedings have commenced" is required.

Section 10092.12. Reporting.

The purpose of this section is to establish the reporting requirements of Finance Provider Entities and the Authority under the Program.

This section is being amended to facilitate the automation of monthly data reporting through streamlining some requirements as well as making it the Authority's responsibility to request certain data on a monthly basis.

Section 10092.13. California Hub for Energy Efficiency Financing Privacy Rights Disclosure.

The purpose of this section is to discuss the Eligible Commercial Financing Customer's privacy rights relating to information collected through the Program and to obtain approval and acknowledgement that authorizes the Participating Project Developer, Participating Contractors, IOUs, and Finance Provider Entity to share information, some of which may be personally identifiable, with the authority.

This section is being amended to comply with CA Civil Code Section 1798.24 which requires a time limit to be established for a period of data collection and release. Further, it sets the term of the Privacy Rights Disclosure to last through the term of the Eligible Commercial Financing Customer's financing agreement.

Section 10092.14. Energy Savings Measure List.

The 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.

This section was amended by adding new measures to the ESM list to remain current with emerging energy efficient technologies, to bring some measures in line with industry standards, and to expand the pool of measures which are eligible for self-installation by the customer.

Section 10092.15. On-Bill Repayment.

The purpose of this section is to provide rules governing a mechanism, known as On-Bill Repayment (“OBR”) by which a utility customer repays third-party private capital financing charges when they pay their monthly utility bill. Including this feature as an option in the 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.

This section is necessary for the Authority to set the guidelines and provide a centralized, statewide hub for multiple finance companies to receive payments through the bills of all four IOUs. This section also is necessary to establish additional data submission and financing agreement eligibility requirements of Participating Finance Provider Entities beyond the basic program requirements as laid out in other sections. Also, this section specifies the obligations of the Authority and defines the operation of the Operational Reserve Fund (“ORF”) that protects repayment streams to Participating Finance Provider Entities in the cases of delayed bills or returned items.

CONSIDERATION OF ALTERNATIVES

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

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

AGENCY CONTACT PERSON

Written comments shall be submitted or directed to: cheef@treasurer.ca.gov.

Inquiries and any questions regarding the substance of the regulations shall be submitted or directed to:

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

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 801 Capitol Mall, Second Floor, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons, the proposed text of the regulations, the Economic Impact Statement, and the Technical, Theoretical, and/or Empirical Studies, Reports, or Documents. Copies of these items are available upon request from the Agency Contact Person designated in this Notice or at the Authority's website located at <https://www.treasurer.ca.gov/caeatfa/cheef/sblp/regulations/index.asp/>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon completion, a copy of the Final Statement of Reasons may be requested from the Agency Contact Person designated in this Notice or at the Authority's website located at https://www.treasurer.ca.gov/caeatfa/cheef/sblp/regulations/index.asp.

AVAILABILITY OF MATERIALS ON THE INTERNET

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