

## INITIAL STATEMENT OF REASONS

### California Alternative Energy and Advanced Transportation Financing Authority

**Sections 10092.1, 10092.2, 10092.3, 10092.4, 10092.5, 10092.6, 10092.7, 10092.8, 10092.9, 10092.10, 10092.11, 10092.12, 10092.13, and 10092.14.**

**Title 4, Division 13, Article 6  
of the California Code of Regulations**

## INTRODUCTION

The California Alternative Energy and Advanced Transportation Financing Authority (“Authority” or “CAEATFA”) 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 CPUC. Specifically, these Regulations will establish the Commercial Energy Efficiency Financing Program (“SBF Program” or “Program”), one of several pilot programs devised in the CPUC-approved *Decision Implementing 2013-14 Energy Efficiency Financing Pilot Programs* (“Decision”)<sup>1</sup> and subsequent CPUC actions<sup>2</sup>. 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, 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.

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 of “projects” as those terms are defined in PRC Section 26003, these regulations interpret the Decision and implement the Program<sup>3</sup>. To encourage commercial energy efficiency

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<sup>1</sup> Decision Implementing 2013-2014 Energy Efficiency Financing Pilot Programs, Decision 13-09-044.

<sup>2</sup> 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.

<sup>3</sup> The REEL program is referred to and described in the Decision as the Single Family Loan Program (SFLP).

financing, the Authority is creating a loss reserve to mitigate finance company risk in originating financing agreements for energy efficiency retrofit projects. 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.

In initially developing the Program, Authority staff (“Staff”) undertook a public participation process beginning in October 2016 to develop emergency regulations, which included individual meetings and consultation with State agencies and interested parties, notices to interested parties, public availability with comment periods specific to preliminary drafts of proposed regulations and Program structure, and public workshops. Stakeholders included CPUC staff, representatives of the IOUs, cities and counties, various interest and consumer advocacy groups, financial institutions, independent contractors and contractor associations, and technical consulting groups representing the energy efficiency industries.

In total, six workshops were held with the public to discuss key issues and gain substantial input to develop the Program. Workshops were held in Sacramento with the option provided for interested parties to participate via webinar and teleconference in order to reach as many stakeholders as possible. Through this public process, Authority staff gained a strong understanding of the Program’s mandate, California’s ongoing need for energy efficiency financing incentives, and Program structuring issues and concerns. The proposed regulations balance stakeholder comments with the statutory, legal and Program administration framework established in the Decision as required by the CPUC, and establish the Program structure and procedures.

The Authority proposes to add Title 4, Division 13, Article 6, Sections 10092.1 through 10092.14 of the California Code of Regulations concerning the implementation of the Commercial Energy Efficiency Financing Program under the regular rulemaking process. The proposed Regulations duplicate or overlap state or federal statute or 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 Section 11349.1(a)(3).

On December 17, 2018 the Office of Administrative Law (“OAL”) approved CAEATFA’s initial Proposed Emergency Regulations (OAL File No. 2018-1207-02E) to establish the Commercial Energy Efficiency Financing Program pursuant to Public Resources Code Section 26009. The regulations were readopted with modifications under the emergency rulemaking process for a 90-day period effective June 18, 2019 (OAL File No. 2019-0603-02E). The Authority will submit a third emergency regulation readoption during the 45-day public comment period associated with the filing of this Initial Statement of Reasons, with an anticipated effective date of September 16, 2019. These proposed regulations are substantially similar to those enacted on June 18, 2019 under the emergency rulemaking process, and include neither amendments nor additions.

The Authority is soliciting input for any modifications or amendments to these proposed regulations. Further, a public hearing regarding the regulations has been scheduled from 10:00 AM until business is concluded on Tuesday, October 8, 2019, at 801 Capitol Mall, Room 141, Sacramento, California 95814. Any additional public hearings will be publicized on

CAEATFA's Listserv and on the Authority's website located at <https://www.treasurer.ca.gov/caeatfa/cheef/sblp/index.asp>.

## SECTION-BY-SECTION ANALYSIS

### SECTION 10092.1 DEFINITIONS

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

The Authority is implementing an Energy Efficiency financing program with a credit enhancement in the form of a loss reserve, with the primary goals to “(i) increase the volume of (energy efficiency) EE financing to attract capital providers and attract new market participants; (ii) provide a reliable, one-stop mechanism which provides attractive rates and terms for consumers; and (iii) a relatively quick turn-around for payments to contractors.”<sup>4</sup>

The Decision does not define all of the terms necessary to implement this financing program. This section provides definitions of commonly used terms throughout the regulations to ensure that stakeholders and users are provided a clear and transparent description of Program requirements, processes, and procedures, and that the Program is consistent with the Decision and governing documents.

2. Specific Purpose of the Regulation.

This section defines terms commonly used throughout the regulations and Program documents. The definitions provide detail on Program requirements and terminology, including Eligible Commercial Financing Customers, Eligible Property, Finance Provider Entities, Eligible Contractors, Eligible Project Developers, Energy Saving Measures, and the Loss Reserve Account that will be established by the Authority. In certain instances, the Authority has defined terms which are common in the industry but can be interpreted in many different ways, such as “Distributed Generation” and “Demand Response”. In other instances, terms are defined to improve clarity, avoid unnecessary repetition, and to improve consistency throughout the regulations. For instance, a distinction is made between a “Project”, consisting of one or more Scopes of Work that are installed at an Eligible Property, and an “Eligible Financing Agreement”, which is the agreement between the Finance Provider Entity and Eligible Commercial Financing Customer that provides funds to pay for a Project. Further, the Authority has clarified that “Eligible Financing Agreements” must be used to fund improvements to existing buildings rather than new construction or the purchase of a building.

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<sup>4</sup> Decision Implementing 2013-2014 Energy Efficiency Financing Pilot Programs, Decision 13-09-044.

**10092.1(a):** The purpose of this provision is to establish the definition of “Ancillary Elements” as the Project components that fall outside a Scope of Work and further clarifies what those components may include.

**10092.1(b):** The purpose of this provision is to establish the definition of “Authority” as the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA), established pursuant to Division 16 (commencing with Section 26000) of the Public Resources Code.

**10092.1(c):** The purpose of this provision is to establish the definition of “Bill Impact Estimate” as an estimate of the anticipated energy cost savings that are expected to result from the installation of Energy Saving Measures, which is provided to the Eligible Commercial Financing Customer prior to work being performed at the Eligible Property. “Bill Impact Estimate” is also referred to as “BIE”.

**10092.1(d):** The purpose of this provision is to establish the definition of “Capitalized Interest” as accrued interest from a previous financing agreement for a Project (such as a construction loan or down payment loan) where the interest has been added to the Total Financed Amount of an Eligible Financing Agreement.

**10092.1(e):** The purpose of this provision is to establish the definition of “CHEEF Financing Identifier” as an identification number created by the Authority and provided to the Finance Provider Entity for an Eligible Financing Agreement at the time it is approved and enrolled as an Enrolled Financing Agreement. “CHEEF Financing Identifier” is also referred to as “CHEEF Financing ID”.

**10092.1(f):** The purpose of this provision is to establish the definition of “Claim-Eligible Charge-Off Amount” and to define how it is calculated.

**10092.1(g):** The purpose of this provision is to establish the definition of “Claim-Eligible Financed Amount” as the portion of the Total Financed Amount for which an Finance Provider Entity may submit a claim for reimbursement in the event of a charge-off, and to define how it is calculated and stipulate limits on both the total dollar amount and the percentage of Non-Energy Components allowed.

**10092.1(h):** The purpose of this provision is to establish the definition of “Claim-Eligible Ratio” and to define how it is calculated.

**10092.1(i):** The purpose of this provision is to establish the definition of “Commission” as the California Public Utilities Commission established pursuant to Article XII of the California Constitution. “Commission” is also referred to as “CPUC”.

**10092.1(j):** The purpose of this provision is to establish the definition of “Community Choice Aggregator” as that defined in Section 331.1 of the California Public Utilities Code. “Community Choice Aggregator” is also referred to as “CCA”.

**10092.1(k):** The purpose of this provision is to establish the definition of “CSLB” as the California Contractors State License Board established pursuant to Article 1 (commencing with Section 7000) of Chapter 9 of Division 3 of the Business and Professions Code.

**10092.1(l):** The purpose of this provision is to establish the definition of “Demand Response” as reductions, increases, or shifts in electricity consumption by customers in response to economic or reliability signals, and aim to maximize ratepayer benefit. “Demand Response” is also referred to as “DR”.

**10092.1(m):** The purpose of this provision is to establish the definition of “Distributed Generation” as technologies that generate or store energy for use on or near the same site, including, but not limited to, solar photovoltaic, wind power, and battery storage. “Distributed Generation” is also referred to as “DG”.

**10092.1(n):** The purpose of this provision is to establish the definition of “Eligible Commercial Financing Customer” to clarify the role and requirements of those who enter into an Eligible Financing Agreement.

**10092.1(o):** The purpose of this provision is to establish the definition of “Eligible Contractor” as an individual or entity that meets the requirements specified in Section 10092.4(b)(1).

**10092.1(p):** The purpose of this provision is to establish the definition of “Eligible Financing Agreement” as an agreement made between a Finance Provider Entity and an Eligible Commercial Financing Customer to finance a Project, and requirements for eligibility.

**10092.1(q):** The purpose of this provision is to establish the definition for both “Eligible Lease” and “Eligible Equipment Financing Agreement” as an agreement that provides the Eligible Commercial Financing Customer with Energy Saving Measures in exchange for scheduled regular payments over a specified term, and may include transfer of title at the beginning or end of the term. It also stipulates other eligibility requirements.

**10092.1(r):** The purpose of this provision is to establish the definition of “Eligible Loan” as an agreement that provides the Eligible Commercial Financing Customer with ownership of Energy Saving Measures in exchange for scheduled regular payments over a specified term, and to stipulate other eligibility requirements.

**10092.1(s):** The purpose of this provision is to establish the definition of “Eligible Project Developer” as an individual or entity that meets the requirements specified in Section 10092.4(b)(2).

**10092.1(t):** The purpose of this provision is to establish the definition of “Eligible Property” as a property that is supplied with gas and/or electric service from one or more Investor Owned Utilities, Electric Service Providers, or Community Choice Aggregators, and is used for business activities.

**10092.1(u):** The purpose of this provision is to establish the definition of “Eligible Savings-Based Payment Agreement” as an agreement that provides the Eligible Commercial Financing Customer with Energy Saving Measures in exchange for scheduled regular payments over a specified term or until reaching a specified amount, where the sum of the financing payment and the monthly energy cost with the Energy Saving Measures is projected to be less than the pre-installation monthly energy cost without the Energy Saving Measures . It also stipulates other eligibility requirements.

**10092.1(v):** The purpose of this provision is to establish the definition of “Eligible Service Agreement” as an agreement that provides the Eligible Commercial Financing Customer with the use of Energy Saving Measures as well as ongoing service and maintenance of that equipment in exchange for regular payments, but does not include transfer of title. It also stipulates other eligibility requirements.

**10092.1(w):** The purpose of this provision is to establish the definition of “Eligible Small Business Financing Customer” as a customer benefiting from an Eligible Financing Agreement, which is not a public entity and the Program considers to be a small business based on number of employees, annual revenue, or meeting the U.S. Small Business Administration’s size standards found in Part 121.201 of Title 13 of the Code of Federal Regulations.

**10092.1(x):** The purpose of this provision is to establish the definition of “Energy Efficiency” as an energy-using appliance, equipment, control system, or practice that result in reduced energy use while maintaining comparable or better functionality. “Energy Efficiency” is also referred to as “EE”.

**10092.1(y):** The purpose of this provision is to establish the definition of “Energy Professional” as an individual who is either certified as a Certified Energy Manager (CEM) by the Association of Energy Engineers or licensed as a Professional Engineer (PE) by the State of California.

**10092.1(z):** The purpose of this provision is to establish the definition of “Energy Saving Measure” as any Energy Efficiency or Demand Response measure at an Eligible Property and the alterations and improvements that are required to install it, for which the fuel source being utilized or conserved is provided by an IOU, CCA, or ESP. “Energy Saving Measure” is also referred to as “ESM”.

**10092.1(aa):** The purpose of this provision is to establish the definition of “Energy Saving Measure Identifier” as a unique identifier assigned by the Authority and used to distinguish one measure within the ESM List from another. “Energy Saving Measure Identifier” is also referred to as “ESM ID”.

**10092.1(bb):** The purpose of this provision is to establish the definition of “Energy Saving Measure List” as the list of Energy Saving Measures that are pre-approved by the Authority for installation under the Program, and includes corresponding requirements and eligibility criteria. The Energy Saving Measure List is identified in Section 10092.14 of this Article. “Energy Saving Measure List” is also referred to as “ESM List”.

**10092.1(cc):** The purpose of this provision is to establish the definition of “Energy Service Provider” as an Electric Service Provider as defined in Section 218.3 of the California Public Utilities Code. “Energy Service Provider” is also referred to as “ESP”.

**10092.1(dd):** The purpose of this provision is to establish the definition of “Enrolled Financing Agreement” as an Eligible Financing Agreement approved for enrollment in the Program by the Authority.

**10092.1(ee):** The purpose of this provision is to establish the definition of “Enrollment Date” as the date that the Trustee has funded the Finance Provider Entity's Loss Reserve Account for the Enrolled Financing Agreement.

**10092.1(ff):** The purpose of this provision is to establish the definition of “Executive Director” as the Executive Director of the Authority, or its designee. “Executive Director” is also referred to as “ED”.

**10092.1(gg):** The purpose of this provision is to establish the definition of “Finance Provider Applicant” as both the Affiliate Finance Provider Applicant and Primary Finance Provider Applicant as described in Section 10092.2(a), collectively. “Finance Provider Applicant” is also referred to as “FPA”.

**10092.1(hh):** The purpose of this provision is to establish the definition of “Finance Provider Entity” as both the Affiliate Finance Provider Entity and Primary Finance Provider Entity as described in Section 10092.2(a), collectively. “Finance Provider Entity” is also referred to as “FPE”.

**10092.1(ii):** The purpose of this provision is to establish the definition of “Financial Institution” as any insured depository institution, insured credit union, or Community Development Financial Institution (CDFI), as each defined in Section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702), a Financial Development Corporation as defined by the term "Corporation" in California Corporations Code §14003(f), or any non-bank entity supervised by the Federal Reserve.

**10092.1(jj):** The purpose of this provision is to establish the definition of “Investor-Owned Utility” as Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, or Southern California Gas Company, collectively referred to as “IOUs”.

**10092.1(kk):** The purpose of this provision is to establish the definition of “IOU Custom” as a program offered by an IOU, REN, or CCA in which measures require pre-approval, and incentives are based on unique project characteristics.

**10092.1(ll):** The purpose of this provision is to establish the definition of “IOU Deemed” as a program offered by an IOU, REN, or CCA in which eligible measures and rebate amounts are pre-determined, and includes downstream, midstream, upstream, and direct install programs.

**10092.1(mm):** The purpose of this provision is to establish the definition of “Loss Reserve Account” as an account that holds the Loss Reserve Contribution for Enrolled Financing Agreements for the benefit of a Finance Provider Entity, established and maintained by the Trustee at the Authority’s direction.

**10092.1(nn):** The purpose of this provision is to establish the definition of “Loss Reserve Account Representative” as that detailed in Section 10092.2(b)(6).

**10092.1(oo):** The purpose of this provision is to establish the definition of “Loss Reserve Contribution” as the credit enhancement contributed to the Loss Reserve Account for each Enrolled Financing Agreement in the Program.

**10092.1(pp):** The purpose of this provision is to establish the definition of “Marketing Representative” as that detailed in Section 10092.2(b)(7).

**10092.1(qq):** The purpose of this provision is to establish the definition of “Multi-Family Property” as a residential rental building with five or more units.

**10092.1(rr):** The purpose of this provision is to establish the definition of “Non-Energy Components” as the Non-ESMs, Capitalized Interest, and Participating Project Developer fees on a Project.

**10092.1(ss):** The purpose of this provision is to establish the definition of “Non-ESMs” as any equipment, alteration, or improvement that does not fall under the definition of an Energy Saving Measure, excluding Distributed Generation. Measures included on the ESM List cannot be Non-ESMs unless they do not utilize or conserve fuel provided by an IOU/CCA/ESP. Non-ESMs also include measures that would otherwise be considered an ESM but do not utilize or conserve fuel provided by an IOU/CCA/ESP.

**10092.1(tt):** The purpose of this provision is to establish the definition of “Participating Contractor” as an Eligible Contractor who has been granted approval to participate in the Program by the Authority, as described in Section 10092.4(c).

**10092.1(uu):** The purpose of this provision is to establish the definition of “Participating Project Developer” as an Eligible Project Developer who has been granted approval to participate in the Program by the Authority, as described in Section 10092.4(c).

**10092.1(vv):** The purpose of this provision is to establish the definition of “Program” as the Commercial Energy Efficiency Financing Program described in Article 6, of Division 13, or Title 4, of the California Code of Regulations.

**10092.1(ww):** The purpose of this provision is to establish the definition of “Program Holding Account” as the account that holds funds allocated by the IOUs for the Program, established and maintained by the Trustee at the Authority’s direction.



**10092.1(xx):** The purpose of this provision is to establish the definition of “Program Identifier” as a number that represents a program administered by the Authority, assigned by the Authority or its agent(s). “Program Identifier” is also referred to as “Program ID”.

**10092.1(yy):** The purpose of this provision is to establish the definition of “Project” as the Scopes of Work and Ancillary Elements at one or more Eligible Properties, financed in whole or in part under a single Eligible Financing Agreement.

**10092.1(zz):** The purpose of this provision is to establish the definition of “Regional Energy Network” as that granted authorization by the CPUC under Decision 12-05-015, and later defined in Decision 12-11-015. “Regional Energy Network” is also referred to as “REN”.

**10092.1(aaa):** The purpose of this provision is to establish the definition of “Scope of Work” as the Energy Saving Measures and/or Non-ESMs installed and certified by a single Participating Contractor or Self-Installer on a Project.

**10092.1(bbb):** The purpose of this provision is to establish the definition of “Scope of Work Completion Date” as the date that a Participating Contractor or Self-Installer completes installation of its Scope of Work.

**10092.1(ccc):** The purpose of this provision is to establish the definition of “Self-Installer” as an Eligible Commercial Financing Customer who installs any Non-ESM or Energy Saving Measure on a Project, as described in Section 10092.7(c).

**10092.1(ddd):** The purpose of this provision is to specify the calculation method of the “Total Charge-Off Amount” for the various financing instruments allowed under the Program.

**10092.1(eee):** The purpose of this provision is to establish the definition of “Total Financed Amount” as the total amount funded by the Finance Provider Entity toward the Project, not including any interest payments or ongoing service, maintenance, or finance charges, as specified for the various financing instruments allowed under the Program.

**10092.1(fff):** The purpose of this provision is to establish the definition of “Trustee” as the financial institution chosen by the Authority to hold or administer some or all of the Program Holding Accounts and Loss Reserve Accounts.

### 3. Necessity.

Since the Decision does not define all of the terms required to implement the Program, this section is necessary to define key terms used throughout the regulations to ensure that stakeholders and users are provided a clear and transparent description of Program requirements, processes, and procedures. Without proper definitions, Program terms may have multiple interpretations, and require precise interpretation within the context of the Program. It is also necessary to clearly specify requirements and roles of Program participants, standardize naming conventions, avoid unnecessary repetition, and improve general clarity and consistency throughout the regulations.

**10092.1(a):** This provision is necessary to specify the Project components that fall outside of any Scope of Work and are utilized to calculate the Claim-Eligible Financed Amount. It is common in the industry for projects to include ineligible measures, and this classification is necessary to appropriately allocate ratepayer funds.

**10092.1(b):** This provision is necessary to identify the administrative body with the authority to administer the Program.

**10092.1(c):** This provision is necessary to describe a resource or tool informing the Eligible Commercial Financing Customer of the anticipated benefits of installing Energy Saving Measures, and serving as a tool for them to have sufficient data when evaluating their financial decision. The Decision requires a Bill Impact Estimate to be provided to the Eligible Commercial Financing Customer and this provision is necessary to ensure the Program complies with that guidance document.

**10092.1(d):** This provision is necessary to accommodate the industry practice of using short-term financing to initially finance projects and to include the interest the short term financing in the Total Financed Amount of an Enrolled Financing Agreement. Including Capitalized Interest in the Total Financed Amount is necessary to broaden the impact of the Program while also limiting it to interest accrued on previous financing agreements used on a Project.

**10092.1(e):** This provision is necessary to create an identification number that the Authority will use to identify each Enrolled Financing Agreement. The identification number is necessary to correctly reference the Eligible Financing Agreement in communications with the Finance Provider Entity, to protect the Eligible Commercial Financing Customer's identity when collecting data points, and to create a standardized, and sortable database of Enrolled Financing Agreements. Further, it is necessary to assign a Program-specific identifier to ensure the Program is be administered uniformly and to distinguish this identifier from non-sequential and possibly incompatible identifiers assigned by the Finance Provider Entities participating in the Program.

**10092.1(f):** This provision is necessary to calculate the amount the Authority will disburse to a Loss Reserve Account Representative for a claim based on a charge-off an Eligible Financing Agreement by a Finance Provider Entity. This value is necessary because the Authority needs to communicate to the Trustee the amount to both the Trustee and the Finance Provider Entity.

**10092.1(g):** This provision is necessary to establish the portion of the Total Financed Amount eligible for reimbursement in the event of a charge-off and to calculate the credit enhancement for the Eligible Finance Agreement. This provision is also necessary because it sets the exclusions and limitations for what can be credit enhanced within the Program. The Claim-Eligible Financed Amount excludes Distributed Generation because the Program is designed to encourage Energy Efficiency specifically, and is restricted from subsidizing Distributed Generation. Feedback from stakeholders and industry experts found that many Energy Efficiency projects also included non-Energy Efficiency discretionary improvements because they are easier to finance together. To accommodate this common industry practice, and to simplify the Program for Eligible Commercial Financing Customers, it is necessary to allow up to 30% of the

Claim-Eligible Financed Amount to be Non-Energy Components. It is also necessary to limit the Claim-Eligible Financed Amount to \$1 million to appropriately balance the needs of the small business industry with an appropriate level of risk and exposure of the Loss Reserve Account funding and the Authority's ability to support many projects.

**10092.1(h):** This provision is necessary to provide a standardized prorated value of the amount financed and the portion of it that is eligible for reimbursement in the event of a charge-off. This ratio is necessary to calculate what proportion of a charged-off Eligible Finance Agreement is claim-eligible because a defaulted Eligible Finance Agreement is likely to have a charged-off balance less than the Total Financed Amount.

**10092.1(i):** This provision is necessary to identify the governmental body that authorized the Program.

**10092.1(j):** This provision is necessary to identify a type of entity that procures electric service, delivered by an IOU, to Eligible Commercial Financing Customers at Eligible Properties, to better define Program eligibility.

**10092.1(k):** This provision is necessary to identify the governmental body responsible for oversight and regulation of the construction industry in California, including the licensure of qualified contractors.

**10092.1(l):** This provision is necessary to define Demand Response as that term is used in the regulations so that there is common understanding and meaning because the term might have a different meaning outside the Program. It was necessary to define Demand Response, as it is eligible and directly relevant to the energy saving goals of the Program.

**10092.1(m):** This provision is necessary to define Distributed Generation as that term is used in the regulations so that there is common understanding and meaning because the term might have a different meaning outside the Program. It is necessary to include this term to accommodate the industry practice of energy efficiency and distributed generation improvements being installed concurrently, or under the same project or financing. In addition, given the Program is designed to encourage Energy Efficiency specifically, and is restricted from subsidizing Distributed Generation, the use of this definition is necessary to help establish what cannot be included in the Claim-Eligible Financed Amount to ensure compliance with the Decision.

**10092.1(n):** This provision is necessary to clearly define the person or entity eligible to participate as a commercial financing customer through the Program and to ensure compliance with the Decision

**10092.1(o):** This provision is necessary to define a contractor that has applied for and meets all eligibility requirements in the regulations but has not yet been approved by the Authority for participation in the Program. This provision is also necessary to distinguish Eligible Contractors from Participating Contractors and any contractors that do not meet all eligibility requirements or have not submitted an application to the Authority.

**10092.1(p):** This provision is necessary to establish the requirements of an eligible financing agreement to be under \$5 million, to preclude financing of new construction and to accommodate various financing instruments, including loans, leases, energy service agreements and energy savings agreements. It was necessary to limit the financing agreement to \$5 million to appropriately balance the needs of the small business industry with an appropriate level of risk and exposure of the Loss Reserve Account funding and the Authority's ability to support many projects. It was necessary to preclude new construction to remain in compliance with the Decision, which directs facilitation of energy efficiency retrofits on existing buildings. It was necessary to accommodate loans, leases, energy service agreements and energy savings agreements to align the Program with currently industry trends and growth and ensure broader Program participation.

**10092.1(q):** This provision is necessary to define the types of financing agreements that are eligible to be an Eligible Financing Agreement and the criteria that must be met for each specific financing instrument. It is necessary to require a term or schedule of payments to full satisfaction to ensure that the Loss Reserve Contribution can be clearly calculated and the Authority's obligation under the Program is transparent with a defined term. It also provides an appropriate safeguard on Program funds. It is necessary to clarify whether title of equipment can be transferred to provide clarity to the Finance Provider Entities.

**10092.1(r):** This provision is necessary to include loans as an Eligible Financing Agreement and the criteria that must be met as an eligible financing instrument in the Program. It is necessary to require a term or schedule of payments to full satisfaction to ensure that the Loss Reserve Contribution can be calculated and the Authority's obligation under the Program is transparent with a defined term. It also provides an appropriate safeguard on Program funds. It is necessary to clarify that the customer acquires ownership of the measures to provide clarity to the Finance Provider Entities. It is also necessary to require closed end loans, and exclude revolving lines of credit, to calculate the Loss Reserve Contribution so that the Authority's obligation under the Program is transparent and with a defined term.

**10092.1(s):** This provision is necessary to define an individual or entity that meets the requirements to enroll with the Program as a Project Developer. Stakeholders informed the Authority that Project Developers play essential roles in facilitating and growing energy efficiency retrofit transactions in the private sector. The inclusion of Project Developers as stakeholder and participants in the Program is necessary to align with industry standards and strengthen the Program's impact and usability.

**10092.1(t):** This provision is necessary to clarify the type of property that is eligible for energy efficiency retrofits under the Program and to ensure compliance with the Decision. It was necessary to further clarify whether multifamily rental properties are eligible to provide clarity to Program participants since multifamily rental properties are not typically considered small businesses yet are eligible under this Program.

**10092.1(u):** This provision is necessary to include savings based payment agreements as an Eligible Financing Agreement and to describe the criteria that must be met as an eligible financing instrument in the Program. This provision is further necessary so that there is common

understanding and meaning because the term might have a different meaning outside the Program. Including savings-based payment agreements in the Program is necessary to provide customers with a financing option that is cash flow positive. Savings measurement and verification no less often than annually is necessary to ensure that the equipment is operating properly and that the savings realized by the customer are being shared with the customer without applying too burdensome a measurement frequency on the Finance Provider Entity. Because the actual results are not known until after installation, this provision is necessary to establish guidelines and limitations that allow the Eligible Commercial Financing Customer to share the benefits of better-than-expected savings while being protected in the event that savings are less than projected due from errors, omissions, and bad actors. The inclusion of Eligible Savings-Based Payment Agreements as financing instruments in the Program is necessary to align with industry standards and strengthen the Program's impact and usability.

**10092.1(v):** This provision is necessary to include financing agreements that allow maximum flexibility of financing options while requiring that Eligible Commercial Financing Customers benefit from ongoing service and maintenance and either a guarantee of energy savings or a guarantee of functionality of installed measures. These are necessary to ensure that the full and anticipated value is delivered to the Eligible Commercial Financing Customer and to align the Program with industry standards and strengthen its impact and usability.

**10092.1(w):** This provision is necessary to define small businesses in order for those customers and Finance Provider Entities to know whether they qualify to participate in the Program. It was necessary for the Authority to provide three methods of qualification to balance the needs to streamline the Program for Finance Provider Entities and contractors, accommodate the various types of small business models, and comply with the Decision. Stakeholders requested a streamlined process to strengthen the likelihood of Program impact, and the first two options -- 100 or fewer employees and Annual revenue of less than \$15 million -- are consistent with existing commercial underwriting practices and reflect simplified similar requirements of the California Department of General Services Certification Eligibility Requirements for state solicitation and contracting purposes. The third option enables a Finance Provider Entity to use the U.S. Small Business Administration standards directly, which is also consistent with existing commercial underwriting practices and adopted by Finance Provider Entities. The three approaches to qualification are necessary to increase the effectiveness and usability of the Program, with various options to accommodate various types of small businesses. It is necessary to limit the Program to small businesses to comply with the Decision.

**10092.1(x):** This provision is necessary to establish the scope and intent of Energy Efficiency in the context of the Program, which is essential to determine what measures qualify as Energy Saving Measures, what details and data need to be chronicled, and how credit enhancements are calculated. This definition is also necessary to clearly define a term that might have different meanings outside of the Program so that there is common understanding and meaning. Lastly, it was necessary to define Energy Efficiency, as it is directly relevant to the energy saving and conservation goals of this Program, and ensures compliance with the Decision.

**10092.1(y):** This provision is necessary to define which professionals are required to certify a measure that qualifies for the Program under the Professionally Certified Measure Method in

order to make Program requirements clear. These two pathways to eligibility are necessary to accommodate the two most common certification processes in the industry, while also ensuring that the entity has undergone an appropriate training or certification to identify appropriate energy savings measures. Including a Certified Energy Manager was necessary because this certification by the Association of Energy Engineers is commonly used in the industry as an energy efficiency professional standard within the industry. It was necessary to include Professional Engineers because energy efficiency firms typically have a professional engineer design and approve energy efficiency projects. The professional engineer license is industry standard licensure within California for engineers who are able to approve projects. This requirement is necessary to better ensure that eligible financings include appropriate Energy Efficiency measures and are in compliance with the Decision and the purposes of the Program.

**10092.1(z):** This provision is necessary to identify which measures qualify for the Program and serves as a core component of credit enhancement calculations, as well as creating the ESM List that standardizes and simplifies the enrollment process. The definition is necessary to encompass both Energy Efficiency and Demand Response, measures that create energy savings in terms of energy quantity and/or energy costs for the Eligible Commercial Financing Customer. This provision is also necessary to address the stakeholder recommendations to include alterations and improvements that are legally or practically required to complete qualifying installations, and to ensure ratepayer fund allocation is compliant with the Decision by requiring that Energy Saving Measures be installed at an Eligible Property and conserve a fuel provided in an IOU territory.

**10092.1(aa):** This provision is necessary to create a unique identifier with a standardized format for each Energy Saving Measure on the ESM List, which can be used for tracking and reporting of installed measures. This is necessary to simplify data collection, transmission, and analysis and more effectively analyze the Program's impact, while identifying areas for improvement.

**10092.1(bb):** This provision is necessary to establish which measures are pre-qualified for approval into the Program and have been deemed by the Authority to be likely to save energy in the instances in which they are installed. The establishment of a list is necessary to allow the Authority to implement a simple and streamlined, statewide list of eligible measures which is consistent with the intent of the Decision and will assist in attracting and retaining Program participants and will create operational efficiencies to utilize a standardize list. Having various lists administered by multiple IOUs is cumbersome for participants, creates inefficiencies for implementations, and confusion and uncertainty for users.

**10092.1(cc):** This provision is necessary to include direct access load serving entities as eligible utility providers for the Program. Because the Program caters to small businesses, Energy Service Providers are necessary to include because they play an important role serving commercial and industrial customers and ensures compliance with the Decision.

**10092.1(dd):** This provision is necessary to define a term used throughout the regulations to establish a common understanding of its meaning. It is necessary to reflect the various stages of a financing agreement and Finance Provider Entities' expectations and the Authorities obligations, as transactions transition from an Eligible Financing Agreement to an Enrolled Financing Agreement.

**10092.1(ee):** This provision is necessary to determine the point in time at which a particular Finance Provider Entity's Loss Reserve Account is funded for a Project and when the Eligible Financing Agreement is enrolled in the Program, beginning the ten year period during which a Claim can be submitted for the enrolled agreement.

**10092.1(ff):** This provision is necessary to clearly identify the Executive Director.

**10092.1(gg):** This provision is necessary to denote a finance company that has applied for, but has not yet been approved for, participation in the Program by the Authority, including any co-applicants. This provision is also necessary to distinguish Finance Provider Applicants from Finance Provider Entities and any finance companies who have not submitted an application to the Authority.

**10092.1(hh):** This provision is necessary to distinguish Finance Provider Entities from Finance Provider Applicants or any finance companies that have otherwise not been approved by the Authority. It is necessary to denote a finance company that has applied for and been approved for participation in the Program by the Authority, including any co-applicants.

**10092.1(ii):** This provision is necessary to distinguish those finance companies that are subject to state or federal oversight from those that are not. Finance companies under federal or state oversight have had their processes, systems, underwriting, portfolio strength, and liability coverage vetted according to regulated standards that the Program can rely on, and this provision is necessary to recognize that and streamline the application process by eliminating duplicative review and relieving a burden on Financial Institution applicants. However, it is necessary for finance companies that do not meet this definition to undergo the additional scrutiny described in Section 10092.3 to add appropriate safeguards for ratepayer funds and Eligible Commercial Finance Customers.

**10092.1(jj):** This provision is necessary to specify which utilities are considered Investor Owned Utilities by the Program, and whose customers are eligible for participation if they meet all other requirements. Since funding for the Program is allocated from IOU ratepayers, it is necessary for those funds to be used for their benefit to comply with the Decision. The Program is not applicable to those that are solely customers of the various publicly owned utilities due to funding source constraints and the authority provided to the CPUC.

**10092.1(kk):** This provision is necessary to be inclusive of projects with measures that do not fall into the pre-approved ESM List, but are pre-approved for customized incentives by the appropriate IOU, REN, or CCA. It is necessary to include custom IOU, REN, or CCA incentives to leverage them and ensure appropriate targeting of ratepayer funds.

**10092.1(ll):** This provision is necessary to be inclusive of all types of commonly understood IOU, REN, or CCA rebate and incentive programs, and establish that these projects are designed, authorized, and funded by the appropriate IOU, REN, or CCA. It is necessary to include the IOU, REN, or CCA programs to leverage them and ensure appropriate targeting of ratepayer

funds. Downstream, midstream, upstream, and direct install program types are terms that are commonly understood in the industry and do not need to be defined.

**10092.1(mm):** This provision is necessary to designate the bank account in which credit enhancement funds are deposited at the direction of the Authority and held for the benefit of the Finance Provider Entity during the course of the Enrolled Financing Agreement term.

**10092.1(nn):** This provision is necessary to identify the Finance Provider Entity for which each Loss Reserve Account has been opened, and the sole entity that can file a claim in the event of a charge-off of a defaulted Enrolled Financing Agreement. This role is necessary to limit risk to ratepayer funds by preventing conflicting claims, incorrect payments, and fraud.

**10092.1(oo):** This provision is necessary to establish the credit enhancement amount for each Enrolled Financing Agreement that is deposited in a Finance Provider Entity's Loss Reserve Account. This definition is necessary to standardize and define for stakeholders the level of Loss Reserve Contribution they are eligible to receive if they enroll financings in compliance with the Program Regulations.

**10092.1(pp):** This provision is necessary to allow a Primary Finance Provider Entity to designate a separate public-facing entity to serve as Marketing Representative. This is necessary to accommodate the industry practice of financing companies collaborating with other businesses to engage customers and provide marketing services, which is necessary to increase the appeal and viability of the Program and accommodate various business models.

**10092.1(qq):** This provision is necessary to differentiate between single family and multifamily properties. This is necessary to establish that market rate multifamily properties with fewer than five units not eligible for the Program, but multifamily properties with five or more units are eligible for the Program.

**10092.1(rr):** This provision is necessary to specify the components that are included in the Total Financed Amount for the Project and may be claim-eligible, that fall outside of any Scope of Work and do not qualify as Energy Saving Measures.

**10092.1(ss):** This provision is necessary to clarify to stakeholders what is not an Energy Saving Measure and limit measures to those that conserve energy provided by an IOU, CCA, or ESP to ensure compliance with the CPUC Decision. It is also necessary to accurately calculate the Claim-Eligible Financed Amount of the Eligible Financing Agreement.

**10092.1(tt)-(uu):** These provisions are necessary to establish the eligible individuals or entities that have applied for enrollment and have been granted approval to participate in the Program by the Authority, and accurately reflect the various stages, requirements, and obligations under different phases of Program participation.

**10092.1(vv):** This provision is necessary to distinguish the Program detailed in this Article from any other program that may exist or be referenced. In particular, it is necessary to define this specific Program to avoid confusion with any of several other Energy Efficiency retrofit



financing programs the Authority is administering on behalf of the CPUC. This definition is also necessary to draw a clear distinction between the Program and any governmental body, designee, individual, or entity involved in the creation, oversight, enforcement, implementation, participation, or review of the Program.

**10092.1(ww):** This provision is necessary to designate the account that holds general funds allocated for ongoing and future Program use, and to distinguish it from other accounts utilized in the Program.

**10092.1(xx):** This provision is necessary to ensure that financing agreements are correctly identified under the appropriate program, and is needed to avoid confusion between this Program and several other Energy Efficiency retrofit financing programs the Authority administers on behalf of the CPUC, especially for a Finance Provider Entity that participates in multiple programs. It is also necessary to streamline and standardize data submission, tracking, and analysis, and will help ensure the accurate administration and reporting of data.

**10092.1(yy):** This provision is necessary to establish a term that groups together all interrelated work financed by a single Eligible Financing Agreements and sets universal requirements for the work, and is used to determine what amount of credit enhancement can be applied. During development of the Program, stakeholders indicated that comprehensive Energy Efficiency retrofits were frequently done as large projects that included various smaller projects implemented by different parties. To align with industry practices and ensure broader impact of the Program, it is necessary for the Authority to identify a broader Project structure that accommodates that industry practice.

**10092.1(zz):** This provision is necessary to include utility providers other than an IOU or CCA that provide fuel service or offer rebates and incentives related to Energy Efficiency improvements that are eligible under the Program, as required by the Decision. This inclusion is necessary to accommodate the shifting retail electricity market in California and the intent of the CPUC to make the Program available to customers within IOU territories who receive their energy from an entity other than an IOU.

**10092.1(aaa):** This provision is necessary to establish the components that make up a Scope of Work, which is a required element of any qualifying Project. A Scope of Work is necessary because it combines all work performed by a single Participating Contractor on a Project together in one standardized summary, which enables the Authority to collect data in a consistent format to streamline the enrollment process, accurately calculate credit enhancements, and simplify verification of compliance with Program requirements and veracity of information. The provision is also necessary to obtain a single and comprehensive certification of installed measures and waiver of liability from each Participating Contractor.

**10092.1(bbb):** This provision is necessary to define the date a Participating Contractor completed the work on its Scope of Work that is financed under the Program, and ensure it is completed by an enrolled Participating Contractor. It is necessary to establish for the Authority when to begin measurements that quantify energy savings resulting from installed Energy Saving Measures.

**10092.1(ccc):** This provision is necessary to define an Eligible Commercial Financing Customer that installs certain specified measures themselves, without a Participating Contractor. Allowing Self-Installers is necessary to offer a cost-effective way for the Eligible Commercial Financing Customer to make energy efficiency upgrades while still qualifying for the Program, and is consistent with industry practices.

**10092.1(ddd):** This provision is necessary to establish the total amount of a charge-off by a Finance Provider Entity as a result of a default, and calculate it similarly across the various financing agreement types while ensuring the Loss Reserve Account is not backstopping Energy Efficiency performance in accordance with the Decision. This provision is also necessary to differentiate Total Charge-Off Amount and the Claim-Eligible Charge-Off Amount, which is the portion of the Total Charge-Off Amount that may be claimed by the Finance Provider Entity from its Loss Reserve Account.

**10092.1(eee):** This provision is necessary to establish the total amount financed toward the Project, and calculate it similarly across various financing agreement types while excluding any ongoing maintenance or interest charges. It is necessary to calculate the initial Claim-Eligible Ratio, thus protecting ratepayer funds from over-disbursement in the event of a claim by the Finance Provider Entity, and ensuring the Loss Reserve Account is not backstopping Energy Efficiency performance in accordance with the Decision.

**10092.1(fff):** This provision is necessary to establish that the financial institution selected to hold or administer Program accounts and Loss Reserve Accounts under the Program is selected by the Authority, and not by another entity. This is necessary to create a secure framework for Finance Provider Entity participation in the Program that allows the Authority to more effectively administer the Program.

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

The Authority relied on experts from both the public and private sectors, and rules and regulations for similar programs in California and other states to develop the definitions used in this section. In addition, the Authority relied on direct discussions with current and former staff from other states or programs with similar programs. The eligibility criteria, as defined in this regulation, were established in consultation with the California Public Utilities Commission, investor owned utilities staff, and other stakeholders. The Authority relied upon the Decision and the following related CPUC documents (subsequently referred to collectively throughout this document as the “Proceeding”) in proposing the adoption of this regulation:

- Decision 13-09-044, Decision Implementing 2013-14 Energy Efficiency Financing Pilot Programs (the “Decision”), issued September 20, 2013
- 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, issued September 11, 2014
- Administrative Law Judge’s Ruling regarding Changes to Decision 13-09-044, issued July 23, 2015
- Assigned Commissioner’s Ruling Extending Pilot Programs, issued August 25, 2014

- Decision 15-06-008 Modifying Decision 13-09-044, Issued June 11, 2015
- Administrative Law Judge’s Ruling Requesting Comments on Harcourt Brown & Carey Revised Recommendation Regarding Energy Efficiency Equipment Lease financing, issued July 23, 2015
- Decision 15-12-002, Modifying Decision 13-09-044, Issued December 3, 2015
- Decision 17-03-026, Decision Addressing Energy Efficiency Financing Pilot Programs Originally Ordered in Decision 13-09-044, Issued March 23, 2017
- Resolution E-4900, Adopts metrics as tools to contribute to the determination of the long-term viability of energy efficiency finance pilots, December 14, 2017

The Authority relied upon the following documents and studies (subsequently referred to collectively throughout this document as the “Studies”) in proposing the adoption of this regulation:

- Energy Efficiency Financing Implementation Primer (DOE SEE Action, January 2014)
- Financing Energy Improvements on Utility Bills (DOE SEE Action, May 2014)
- Energy Efficiency Finance Programs-Use Case Analysis (DOE SEE Action, July 2014)
- California Energy Efficiency Finance Data Working Group Final Report (California Energy Efficiency Finance Data Working Group, December 2013)
- Getting the Biggest Bang for the Buck - Exploring the Rationales and Design Options for Energy Efficiency Financing Programs (LBNL, December 2013)
- Using Financing to Scale Up Energy Efficiency (DOE SEE Action, July 2013)
- Recommendations for Energy Efficiency Finance Pilot Programs (Harcourt Brown & Carey, October 2012)
- Interactions Between Energy Efficiency Programs Funded Under the Recovery Act and Utility funded Energy Efficiency Programs (LBNL, March 2011)
- PG&E Energy Upgrade California 2013-2014 Home Upgrade Participant Handbook, version 4.2, July 2, 2014
- Opinion Dynamics and Dunsky Energy Consulting, Final CPUC REEL Pilot Impact Evaluation Considerations, December 29, 2017
- Transforming Small Business Participating in Energy Efficiency: Driving Energy Savings with a Progressive Approach to Small Business Direct Install Program, (Nexant, 2013)
- Big Opportunities for Small Business: Successful Practices of Utility Small Commercial Energy Efficiency Program (American Council For an Energy-Efficiency Economy, November 2016)

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, or Participating Contractors. During the emergency regulation rulemaking process the Authority conducted extensive stakeholder engagement and research in the pre-

rulemaking process, undertook extensive internal deliberation, and learned lessons from early Program implementation; significant alternatives considered are discussed below:

**10091.2(m):** The Authority considered allowing Distributed Generation to be credit enhanced through this Program, but administratively rejected this option because it would be non-compliant with the Decision. Funds for this Program are collected from ratepayers specifically to support electric or gas energy efficiency measures, not renewable energy, and the CPUC does not allow such cross-subsidization at this time.

**10092.2(p):** The Authority considered restricting the Total Financed Amount in an Eligible Financing Agreement to be limited to \$2.5 million. This alternative was rejected because it would preclude whole-building energy retrofits which could exceed the \$2.5 million limit and that a higher Total Financed Amount would facilitate Program growth. Further, industry input showed that finance companies perform greater due diligence on projects greater than \$2.5 million, especially if the financing is not covered by a credit enhancement, so to the increased risk associated with a larger Total Financed Amount is mitigated by additional scrutiny.

**10092.1(s):** It was suggested that an Eligible Project Developer hold a credential from the Investor Confidence Project (ICP) as a gauge of its ability to design and certify Projects and to set a minimum qualification for ensuring measures installed on a Project reduce energy consumption. The Authority rejected this suggestion because the certification has not yet been widely adopted by the industry, and establishes stricter requirements than what is necessary under the Program which would restrict and limit participation in the project developer role. Further, the existing measure eligibility methods established, in particular the Professionally Certified Measure Method, provides adequate assurance that measures that do not qualify via the ESM List Method will reduce energy consumption.

**10092.1(t):** The Authority considered the option to exclude Multi-Family Properties from the definition of Eligible Property but this was rejected because it was an asset class that could benefit from the Program.

**10092.1(u):** The Authority considered requiring the Finance Provider Entity to report energy savings associated with Eligible Savings-Based Payment Agreements either monthly or quarterly but rejected these options because a frequency less than annually would impose too great an administrative and reporting burden and would hinder Program participation.

**10092.1(v):** The Authority considered excluding the requirement for a guarantee of functionality for ESMs and Non-ESMs, but this option was rejected because the Finance Provider Entity has the option to offer either a guarantee of functionality or savings – allowing flexibility – and the Program requires that products are either guaranteed to perform or save energy to provide consumer protection; the requirement is not too burdensome and will help meet the Program’s policy goals. Further, the Authority considered requiring the Finance Provider Entity to report energy savings associated with Eligible Service Agreements either monthly or quarterly but rejected these options because it would impose too great an administrative and reporting burden and could restrict Program participation.

**10092.1(w):** It was suggested that the Authority limit the definition of an Eligible Small Business Financing Customer solely to the definition provided by the U.S. Small Business Administration size standards. This suggested alternative was rejected because the Authority received additional stakeholder feedback that the U.S Small Business Administration size standards are complex and more streamlined and simple requirements were necessary to better ensure there would be broad Program participation and increased impact.

**10092.1(y):** The Authority considered the alternative of requiring the Energy Professional to hold a credential from the Investor Confidence Project (ICP) as a gauge of its ability to certify Projects qualifying via the Professionally Certified Measure Method. The authority rejected this alternative because the credential and licensing standards for Certified Energy Managers and Professional Engineers, respectively, were more than adequate as a professional qualification standard to estimate energy savings.

**10092.1(gg):** The Authority considered restricting participation to one finance entity, but rejected this option because it did not want to limit participation, but conversely desires to expand and encourage participation by a number of financing business structures. Feedback from Program stakeholders has shown that a variety of finance company and financing structures exist within the commercial energy efficiency financing market – including emerging structures – which include multiple companies partnering to offer various financing structures/products.

**10092.1(hh):** It was suggested that the Authority add a subscription requirement, such as a subscription to the Equipment Leasing and Finance Association, as a requirement for a Finance Provider Entity. The Authority rejected this suggestion because the existing proposed Program requirements, including but not limited to, committed capital, demonstrated experience, and demonstrated benefits to customers are adequate tools for assessing an applicant’s ability to participate in the Program.

**10092.1(ii):** The Authority initially considered restricting participation to traditional depository institutions (Financial Institutions), but rejected this option because the Authority did not want to limit participation, but conversely desires to expand and encourage participation by a number of financing business structures. Experience in other states and input from industry stakeholders has shown that non-Financial Institution finance companies account for much of the financing volume in the commercial energy efficiency finance market.

**10092.1(pp):** The Authority considered excluding a third party Marketing Representative from Program participation but rejected this option to accommodate companies who offer financing of “white label” products through an energy services company (ESCO) or other like partners and it desires to expand and encourage participation and accommodate a variety of financing business structures. Input from Program stakeholders has shown that a variety of finance company and financing structures exist within the commercial energy efficiency financing market – including emerging structures – which include multiple companies partnering to offer various financing structures/products.

**10092.1(uu):** The Authority initially did not consider the need to include a Participating Project Developer role under the Program. During Program development and research, Staff recognized

that such a role would assist with growing the Program pipeline, facilitate the exchange of Project data between the Authority and contractors not inclined to manage Program paperwork, and serve as a third party to design and organize Projects, strengthening the impact of the Program.

**10092.1(ccc):** The Authority considered not allowing self-installers to install improvements, but rejected this option because it is a common practice in the industry, especially for smaller businesses that can absorb lower costs, and would narrow Program participation.

**10092.1(eee):** The Authority considered including ongoing service and oversight payments by the Eligible Commercial Financing Customer in the calculation of Total Financed Amount but rejected this alternative because it was inconsistent with the Decision. Funds for this Program are collected from ratepayers specifically to support electric or gas energy efficiency measures, not ongoing service and maintenance of the measures, and the CPUC does not allow Program funds to backstop measure performance.

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 of Financing Customer's investment in energy efficiency improvements for their businesses.

## SECTION 10092.2. FINANCE ENTITY ENROLLMENT

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

One of the primary goals of the financing program authorized by the Decision is to “increase the volume of (energy efficiency) EE financing to attract capital providers and attract new market participants.” In order to partner with and attract capital providers and new market participants to increase the volume of Energy Efficiency financing, the Authority must establish criteria and procedures for evaluation. In addition, the role of these capital providers must be clearly set forth. This section sets the requirements for financial institutions and finance lenders to participate in the Program, and the requirements establish an appropriate balance between protection of consumers and ratepayer funds with innovation in the market to encourage the growth of Energy Efficiency projects.

### 2. Specific Purpose of the Regulation.

The purpose of this section is to specify the roles, application process, and eligibility requirements for a finance company to apply for participation in the Program. It details the information and qualifications required of a Finance Provider Applicant, including a comprehensive description of its proposed financing products and how it will utilize credit enhancements to offer benefits to Eligible Commercial Financing Customers compared to its typical product offerings. Furthermore, this section stipulates required acknowledgements, certifications, and representations from Finance Provider Applicants, and establishes procedures for making changes to product offerings or enrollment status.

**10092.2(a)(1):** The purpose of this provision is to establish the role of the Primary Finance Provider Applicant as the entity applying to fulfill the Program role of Financing Submittal, and may fulfill all required Program roles themselves, or in cooperation with an Affiliate Finance Provider Applicant that co-applies with the Primary Finance Provider Applicant.

**10092.2(a)(2):** The purpose of this provision is to establish the role of the Affiliate Finance Provider Applicant as an entity that co-applies along with a Primary Finance Provider Applicant and is applying to fulfill one or more Program roles in addition to being a signatory to the Program application.

**10092.2(a)(3):** The purpose of this provision is to define the term Finance Provider Applicant as the Primary Finance Provider Applicant and the Affiliate Finance Provider Applicant, collectively.

**10092.2(a)(4):** The purpose of this provision is to establish that a Primary Finance Provider Entity is a finance company that has applied and to, and been accepted by, the Authority for enrollment in the Program, and fulfills at a minimum, the Program role of Financing Submittal.

**10092.2(a)(5):** The purpose of this provision is to establish that an Affiliate Finance Provider Entity is a finance company that has applied to, and been accepted by, the Authority for

enrollment in the Program along with the Primary Finance Provider Applicant with which it co-applied, and fulfills Program roles along with the Primary Finance Provider Entity.

**10092.2(a)(6):** The purpose of this provision is to define the term Finance Provider Entity as the Primary Finance Provider Entity and all Affiliate Finance Provider Entities, collectively.

**10092.2(b)(1):** The purpose of this provision is to establish the Program role of Underwriting as approving projects and financing for customers in compliance with the regulations and the application submitted by the Finance Provider Applicant and approved by the Authority. This provision also establishes the Underwriting role must be performed by the Primary Finance Provider Applicant or the Affiliate Finance Provider Applicant.

**10092.2(b)(2):** The purpose of this provision is to establish the Program role of Origination as executing the legal contract for repayment of an Enrolled Financing Agreement with the Eligible Commercial Financing Customer and other Program forms, in compliance with the regulations and the application submitted by the Finance Provider Applicant, and approved by the Authority. This provision also establishes the Origination role must be performed by the Primary Finance Provider Applicant or the Affiliate Finance Provider Applicant.

**10092.2(b)(3):** The purpose of this provision is to establish the Program role of Financing Submittal as submitting the data, documentation, and certification about the Project, Eligible Financing Agreement, and Eligible Commercial Financing Customer to the Authority for enrollment in the Program.

**10092.2(b)(4):** The purpose of this provision is to establish the Program role of Servicing as conducting customer service to on-board and handle customer inquiries for Enrolled Financing Agreements, sending billing statements, collecting payments, and performing other specified functions. This provision also establishes the Servicing role must be performed by the Primary Finance Provider Applicant or the Affiliate Finance Provider Applicant.

**10092.2(b)(5):** The purpose of this provision is to establish the Program role of Monthly Reporting as supplying the Authority with a regular report of required data related to Enrolled Financing Agreements and financing applications and decisions, as specified in the regulations. This provision also establishes the Monthly Reporting role must be performed by the Primary Finance Provider Applicant or the Affiliate Finance Provider Applicant.

**10092.2(b)(6):** The purpose of this provision is to establish the Program role of Loss Reserve Account Representative as the Finance Provider Entity for which the Loss Reserve Account(s) will be opened by the Trustee, and the sole entity that can file a claim in the event of a charge-off. This provision also establishes the Loss Reserve Account Representative role must be performed by the Primary Finance Provider Applicant or the Affiliate Finance Provider Applicant.

**10092.2(b)(7):** The purpose of this provision is to establish the Program role of Marketing Representative as the entity that is publicly listed on Program websites and marketing materials as a result of participation in the Program, and the acknowledgements and certifications that it



must sign. This provision also establishes the Servicing role must be performed by the Primary Finance Provider Applicant or the Affiliate Finance Provider Applicant, or by an additional third-party entity.

**10092.2(c):** The purpose of this provision is to specify the application requirements for the Finance Provider Applicant seeking to enroll to participate in the Program. The Primary Finance Provider Applicant and any Affiliate Finance Provider Applicant and Marketing Representative must submit separate signed copies of the application, including the acknowledgements, certifications, and representations required from the Finance Provider Applicant.

**10092.2(c)(1)(A):** The purpose of this provision is to specify the information required from the entity seeking to become a Primary Finance Provider Entity, which includes its identifying and contact information, and that of its Program contact person and individuals it authorizes to provide and certify data and submit Eligible Financing Agreements for enrollment in the Program on its behalf. Additionally, it must indicate what type of finance entity it is and the names of any regulatory and insuring agencies to which it is accountable, along with any applicable license numbers.

**10092.2(c)(1)(B):** The purpose of this provision is to specify the information required from the entity seeking to become an Affiliate Finance Provider Entity, which includes its identifying and Program contact information and that of its Program contact person. Additionally, it must indicate what type of finance entity it is and the names of any regulatory and insuring agencies to which it is accountable, along with any applicable license numbers.

**10092.2(c)(1)(C):** The purpose of this provision is to specify the information required about the entity that will perform the Program role of Marketing Representative, if different than the Finance Provider Entity, which includes its identifying and contact information and that of its contact person.

**10092.2(c)(2):** The purpose of this provision is to specify the information the Finance Provider Applicant is required to provide to the Authority as part of the enrollment application, including a description which entity will perform each of the Program roles of Underwriting, Origination, Servicing, Monthly Reporting, and Loss Reserve Account Representative if separate entities are applying as a Primary Finance Provider Entity and Affiliate Finance Provider Entity. The Finance Provider Applicant must also provide the name of the entity which will perform the Program role of Marketing Representative, identify the entity funding the Projects, the financing agreement counterparties named on closing documentation, and any assignees of repayment streams, and indicate whether it intends to sell or hold the Enrolled Financing Agreements.

**10092.2(c)(3)(A-B):** The purpose of these provisions is to require a description of the proposed financial products from the Finance Provider Applicant, certified by at least one of the Finance Provider Applicants. This includes but is not limited to details on required collateral, range of amounts, interest rates, term lengths, geographic areas in California where proposed products will be available, underwriting criteria to qualify, and charges, fees, and penalties.

**10092.2(c)(3)(C):** The purpose of this provision is to require a description of how the credit enhancement will be utilized in the Finance Provider Applicant's proposed products to benefit Eligible Small Business Financing Customers compared to the typical product offerings from the entity seeking to become a Finance Provider Entity, such as broadened approval criteria, longer term length, larger financing amounts, better rates, or other advantageous terms.

**10092.2(c)(4):** The purpose of this provision is to specify the acknowledgements that the Finance Provider Applicant and any other entity performing the Program role of Marketing Representative are each required to make to the Authority as part of the enrollment application. These acknowledgements include that the Authority has not made any representations, promises, or guarantees about financing agreements issued under the Program, and that the lender will not represent and will not claim any association or affiliation with the Authority or any IOU.

**10092.2(c)(5)(A-C):** The purpose of these provisions is to stipulate that to be considered for participation in the Program, the Finance Provider Applicant and any other entity performing the Program role of Marketing Representative are each required to certify that they are not subject to any cease and desist order or other regulatory sanction that would impair their ability to participate in the Program, that the person signing the application is authorized to legally bind the Finance Provider Applicant. The provision also establishes that if the Finance Provider Applicant is not a Financial Institution it must comply with additional requirements specified in Section 10092.3.

**10092.2(c)(5)(D):** The purpose of this provision is to stipulate that to be considered for participation in the Program, the Finance Provider Applicant must additionally certify that upon enrollment in the Program, the regulations within this Article will constitute a lender services agreement between itself and the Authority, as required by the Decision.

**10092.2(c)(5)(E-G):** The purpose of these provisions is to stipulate that to be considered for participation in the Program, the Finance Provider Applicant and any other entity performing the Program role of Marketing Representative are each additionally required to certify that they will follow all Program regulations as well as allow the Authority to audit its records relating to Enrolled Financing Agreements and how they represent the Program in public, and that the liability of the Authority and the State of California is limited only to funds deposited in the Loss Reserve Accounts for the Finance Provider Entity.

**10092.2(c)(6):** The purpose of this provision is to specify the additional certifications that the Primary Finance Provider Applicant is required to make to the Authority as part of the enrollment application. The Primary Finance Provider Applicant must certify that as a Finance Provider Entity, for all forthcoming Eligible Finance Agreements submitted for enrollment in the Program, it will provide the required data and documentation to the Authority and secure the required certifications from the all Project participants, ensure that the Eligible Commercial Financing Customer receives a Bill Impact Estimate, and comply with all Program regulations. It must also certify that the Claim-Eligible Financed Amount will not include Distributed Generation, will be funded within 30 days of submitting financing to the Authority for enrollment. It will also notify the Authority within 10 business days if it determines not to fund the entirety of Claim-Eligible Financed Amount after submittal.

**10092.2(c)(7)(A-C):** The purpose of these provisions is to require that once accepted for participation in the Program, the Finance Provider Entity and its Marketing Representative will retain all records on Enrolled Financing Agreements for the financing term, they are solely responsible for all required disclosures and periodic reports to Eligible Commercial Financing Customers, and must comply with all applicable laws, maintain all applicable licenses, and remain in good standing with all applicable governmental authorities.

**10092.2(c)(7)(D):** The purpose of this provision is to require that the Finance Provider Entity and its Marketing Representative represent, warrant, and covenant that they will indemnify, defend, and hold harmless the Authority and each IOU from any losses resulting from the Finance Provider Entity's negligence, illegality, conduct, error or omission, breach of representations, misrepresentation, materials or work performed, and violation of Program regulations or obligations.

**10092.2(c)(7)(E):** The purpose of this provision is to require the Finance Provider Entity and its Marketing Representative to make the additional representations, warranties, and covenants that they agree the IOUs are not liable for energy efficiency improvements funded through Enrolled Financing Agreements, the assessment of potential benefits and costs associated with those improvements, the qualifications, policies, or practices of the Finance Provider Entity, or the Authority's education and outreach.

**10902.2(d):** The purpose of this provision is to describe the Authority's requirements for processing a submitted application from a Finance Provider Applicant to enroll for participation in the Program, including a deadline of fifteen business days for the Authority to review and make a determination. It also specifies that the Authority will notify the Finance Provider Applicant of its decision and that the Authority's decision regarding enrollment is final.

**10092.2(e):** The purpose of this provision is to require the Finance Provider Entity to obtain the Authority's approval to modify financing products after its initial application is approved by the Authority.

**10092.2(f)(1-2):** The purpose of these provisions is to provide a procedural process for a Finance Provider Entity to voluntarily withdraw from participation in the Program. The Finance Provider Entity must provide signed written notice of the reason for its withdrawal, and specify whether it waives any further interest in its Loss Reserve Account because its Enrolled Financing Agreements have been fully repaid or sold, or wishes to retain the Loss Reserve Account for previously enrolled Enrolled Financing Agreements but will not enroll any new financings.

**10092.2(f)(3-6):** The purpose of these provisions is to describe circumstances under which the Executive Director may terminate a Finance Provider Entity from participation in the Program by written notice and the occurrences upon which the Executive Director may do so. The provisions also specify that the terminated Finance Provider Entity is restricted from enrolling any further Eligible Financing Agreements and that it is required to continue to report on Enrolled Financing Agreements after removal. Lastly, these provisions specify that the failure to

continue to report of Enrolled Financing Agreements after termination will lead to the return of the funds to the Program account.

### 3. Necessity.

A key objective of the CPUC's Decision is to partner with and attract private capital to increase the volume of Energy Efficiency financing. This section is necessary to make the application process clear and transparent for private finance companies that want to participate in the Program, while establishing a minimum level of requirements to protect ratepayer funds allocated to the Program and maximize their benefits to Eligible Commercial Financing Customers. This section is necessary to establish the information, standards, and covenants required of the Finance Provider Entity to participate in the Program. The information and standards are necessary to better ensure that the Authority enters into formal relationships with experienced business partners, and appropriately balances industry standards and innovative approaches to safeguard ratepayer investment.

**10092.2(a):** This provision is necessary to describe the various finance entity roles and provide the Program with flexibility to accommodate various business models in the industry. It is common practice in the commercial finance market to have multiple entities involved with the financing, including regulated Financial Institutions or unregulated finance companies, or contractor companies collaborating with finance entities to fund energy efficiency improvements and ongoing maintenance.

**10092.2(a)(1):** This provision is necessary for Finance Provider Applicants with two or more co-applicant entities that perform Program roles together to designate which will be the single lead entity responsible for Project and Eligible Financing Agreement submissions to the Authority after the applicant is enrolled in the Program. This provision is also necessary to enable the Primary Finance Provider Entity to work with another entity to perform the Program role Marketing Representative.

**10092.2(a)(2):** This provision is necessary to create flexibility among entity roles for the Finance Provider Applicant by establishing the potential for a co-applicant to fulfill one or more Program roles along with the Primary Finance Provider Entity. Allowing the Program roles to be split among multiple entities is necessary because it allows the Program to be inclusive of a variety of business models within the commercial energy efficiency market. This provision is also necessary to ensure that the Affiliate Finance Provider Entity is properly qualified to participate in the Program and legally bound it to comply with the Program regulations if it is accepted to participate.

**10092.2(a)(3):** This provision is necessary to improve clarity and reduce repetition in the regulations by establishing a term to reference financing applicants collectively in the Program.

**10092.2(a)(4):** This provision is necessary to distinguish a Primary Finance Provider Applicant applying for enrollment in the Program from one that has been approved by the Authority to participate in the Program. It is also necessary to clarify which entity fulfills the Program role of Financing Submittal and is responsible for Project and Eligible Financing Agreement

submissions to the Authority when two or more entities perform Program roles together. Limiting the Financing Submittal role to one entity is necessary to reduce complexity and the room for error during Program implementation.

**10092.2(a)(5):** This provision is necessary to distinguish an Affiliate Finance Provider Applicant applying for enrollment in the Program from one that has been approved by the Authority to participate in the Program. As noted earlier, this provision is necessary to create flexibility among entity roles for Finance Provider Entities to jointly fulfill Program roles, which allows the Program to accommodate various business models within the commercial energy efficiency market.

**10092.2(a)(6):** This provision is necessary to distinguish a financing entity that has been accepted by the Authority for enrollment in the Program from one that has applied but has not yet been accepted. This provision is also necessary to improve clarity and reduce repetition in the regulations by establishing a term to reference the Primary and Affiliate Finance Provider Entities, collectively.

**10092.2(b):** This provision is necessary to describe all services that are required of the Finance Provider Entity under the Program, whether it consists of a single entity or multiple entities performing different roles.

**10092.2(b)(1):** This provision is necessary to define the Underwriting role required to ensure creditworthiness of Eligible Commercial Financing Customers, eligibility of Projects, and comprehensive compliance with Program regulations and with the Finance Provider Entity's own underwriting guidelines submitted to and approved by the Authority when it applied for enrollment in the Program. Each of these is necessary to adequately protect ratepayer funds in the use of the credit enhancement for Enrolled Financing Agreements. This provision is also necessary to provide flexibility to the Program Underwriting role and align it with commercial finance industry standards by allowing it to be fulfilled by either the Primary Finance Provider Entity or Affiliate Finance Provider Entity.

**10092.2(b)(2):** This provision is necessary to define the Origination process required to ensure the financing contracts with Eligible Commercial Financing Customers are properly executed, Program forms signed and certified, and Eligible Financing Agreements comply with Program regulations and adhere to the terms submitted by the Finance Provider Entity and approved by the Authority. These are necessary to ensure participation is binding to the rules of the Program and consistent with industry standards, to secure repayment obligations for Enrolled Financing Agreements and enforceability of collections and liquidations that reduce exposure of ratepayer funds in Loss Reserve Accounts. This provision is also necessary to provide flexibility to the Program Origination role and align it with commercial finance industry standards by allowing it to be fulfilled by either the Primary Finance Provider Entity or Affiliate Finance Provider Entity.

**10092.2(b)(3):** This provision is necessary to define the Financing Submittal process required to ensure that data, documentation, and certifications for Projects and their Eligible Financing Agreements are submitted to the Authority, which allows the Authority to verify compliance with Program regulations and approved terms for the Finance Provider Entity. It is also

necessary to enable the Authority to track repayment performance and aggregate information to analyze and improve the impact and reach of the Program. Because of its fundamental importance to the implementation and success of the Program, it is necessary that this role be fulfilled by the Primary Finance Provider Entity, who acts as a single point of contact with the Authority to simplify the operation of the submittal process.

**10092.2(b)(4):** This provision is necessary to define the Servicing process required to ensure the Finance Provider Entity actively provides customer service, billing, and payment processing that secures repayment of Enrolled Financing Agreements. This role is also necessary to ensure the Finance Provider Entity makes appropriate efforts in accordance with industry standards to recover past due and defaulted repayments before filing a claim, thereby reducing exposure of ratepayer funds in Loss Reserve Accounts. This provision is also necessary to provide flexibility to the Program role of Servicing and align it with commercial finance industry standards by allowing it to be fulfilled by either the Primary Finance Provider Entity or Affiliate Finance Provider Entity.

**10092.2(b)(5):** This provision is necessary to define the Monthly Reporting process required to enable the Authority to track and audit customer applications, repayment performance, and sale of financings. The reporting is necessary to appropriately protect the use of Program funds and monitor and analyze Program impact. This role is necessary for clarity and improved communication of required data related to Enrolled Financing Agreements by establishing a point of contact for reporting. This provision is also necessary to provide flexibility to the Program role of Monthly Reporting and align it with commercial finance industry standards by allowing it to be fulfilled by either the Primary Finance Provider Entity or Affiliate Finance Provider Entity.

**10092.2(b)(6):** This provision is necessary to define the Loss Reserve Account Representative to establish that only one authorized entity submits claims and receives payouts for approved claims, and it is particularly important because it involves transfers of ratepayer funds. Defining this role is necessary to protect ratepayer funds from fraud, misappropriation, errors, disputes, and miscommunications that may otherwise result from multiple, unauthorized, or competing parties submitting incorrect or conflicting claims, or disbursements being sent to the wrong party.

**10092.2(b)(7):** This provision is necessary to define the Marketing Representative to accommodate the industry practice of financing companies collaborating with other businesses to engage customers and promote brand image through a separate public-facing entity, and serves to increase the appeal and viability of the Program. For example, in situations where companies offer financing through an energy service company or another partner, the finance companies fund and service financing agreements while the financing products are marketed under the Marketing Representative's name.

**10092.2(c):** This provision is necessary to establish the information, standards, and covenants required of the Finance Provider Entity to participate in the Program. The information and standards are necessary to better ensure that the Authority enters into formal relationships with

experienced business partners, and appropriately balances industry standards and innovative approaches to safeguard ratepayer investment.

**10092.2(c)(1)(A)(i-ii):** These provisions are necessary for the Authority to have the appropriate information needed to contact the Primary Finance Provider Entity and its Program contact person.

**10092.2(c)(1)(A)(iii):** This provision is necessary for the Authority to have the appropriate information needed to identify the person authorized to provide data, documentation, and certifications to the Authority when they are received, and to submit financing agreements for enrollment on behalf of the Finance Provider Entity.

**10092.2(c)(1)(A)(iv-v):** These provisions are necessary to verify the type of financing entity the Primary Finance Provider Entity is applying as, its regulating and insuring agencies, and license number, which are needed for the Authority to perform due diligence. Further, this information is necessary to identify whether the applicant is a Financial Institution or not, and therefore whether it is subject to additional requirements detailed in Section 10092.3.

**10092.2(c)(1)(B)(i-ii):** These provisions are necessary for the Authority to have the appropriate information to contact the Affiliate Finance Provider Entity and its Program contact person.

**10092.2(c)(1)(B)(iii-iv):** These provisions are necessary to verify the type of financing entity the Affiliate Finance Provider Entity is applying as, its regulating and insuring agencies, and license number, which are needed for the Authority to perform due diligence. Further, this information is necessary to identify whether the applicant is a Financial Institution or not, and therefore whether it is subject to additional requirements detailed in Section 10092.3.

**10092.2(c)(1)(C):** This provision is necessary to have the appropriate information to contact the Finance Provider Entity's Marketing Representative and its Program contact person, if it is an entity other than the Primary Finance Provider Entity or Affiliate Finance Provider Entity, so that the Authority can display its information on the Program websites and marketing materials.

**10092.2(c)(2)(A-B):** These provisions are necessary for the Authority to know who to contact and which entity will be responsible for providing specific services in compliance with Program regulations and approved terms by fulfilling each role. This is necessary for the Authority to establish responsibilities for ensuring creditworthiness, the Eligible Financing Agreement is executed properly and with terms that benefit the Eligible Commercial Financing Customer, and all data, documents, and certifications are provided to the Authority when the Eligible Financing Agreement is submitted for enrollment. Further, these provisions are necessary for the Authority to ensure the status and repayment performance is properly reported to the Authority after enrollment, and financings are adequately serviced. Further, indicating the entity responsible for each role is necessary to authenticate and pay claims, as well as clearly and correctly publish the Finance Provider Entity's public-facing information on the Program website and marketing materials.

**10092.2(c)(2)(C):** This provision is necessary to inform the Authority of the source of the capital to finance the Projects to ensure transparency of the business model and partnership to approve submitted Eligible Financing Agreements, verify Loss Reserve Contributions are deposited in the correct Loss Reserve Account, and audit Enrolled Financing Agreements.

**10092.2(c)(2)(D):** This provision is necessary to inform the Authority which entity the Eligible Commercial Financing Customer is entering into a repayment contract with.

**10092.2(c)(2)(E):** This provision is necessary to inform Authority which entity will be receiving the benefit of the repayment of the financing, if different from the Finance Provider Entity, to ensure transparency in the business models.

**10092.2(c)(2)(F):** This provision is necessary to inform the Authority how the financing debt asset or repayment stream will be utilized, and to identify and understand any secondary markets enabled by the Program, to ensure transparency in the business models.

**10092.2(c)(3)(A):** This provision is necessary to identify the financial products that the Finance Provider Applicant proposes to offer, and assess whether they meet the requirements of Eligible Financing Agreements under the Program. This information is necessary for the Authority to determine if the proposed products are eligible and applicable to the Program and whether they are likely to stimulate deeper energy efficiency projects, as intended in the Decision. It is also necessary for consumer protection to ensure there are no hidden fees, undisclosed penalties, or predatory terms, and that their proposed risk profile is satisfactory. This provision is further necessary for the Authority to aptly market the products, if approved, and resolve how to correctly calculate the Claim-Eligible Financed Amount.

**10092.2(c)(3)(B):** This provision is necessary for the Authority to know where in California the Finance Provider Applicant's products will be offered so that they can be marketed appropriately to businesses in those areas and within the appropriate IOU territories. It is also necessary to compare with geographic coverage of eligible utility services.

**10092.2(c)(3)(C):** This provision is necessary to ensure that ratepayer funds are utilized to support financing options with lower barriers and measurably advantageous terms that stimulate utility customers to invest in energy efficiency retrofits. The Decision allocated these funds to incentivize private finance companies to extend or improve credit terms compared to their typical product offerings, and this provision is necessary to quantify the improvements to those terms proposed by the Finance Provider Applicant, and ensures that the Authority approves financial products that benefit rate paying Eligible Commercial Financing Customers.

**10092.2(c)(4)(A):** This provision is necessary for the Authority to get a legally binding acknowledgement from the Finance Provider Applicant and Marketing Representative stating that participation in the Program does not guarantee an increase in the size, quantity, or quality of their financing agreements. This is necessary to protect the Authority and the Program's ratepayer funds from exposure to litigation risk from a Finance Provider Entity presuming that participation in the Program is a guarantee of more or better deal flow. This provision is



necessary for the Authority to comply with the terms of its agreement with the IOUs under the Decision.

**10092.2(c)(4)(B):** This provision is necessary for the Authority to prevent Finance Provider Entities and/or Marketing Representatives from misleading customers, stakeholders, Program participants, or the public, speaking acting on behalf of the Authority or any IOU, or being mistaken as representing either of them in any capacity. This provision is necessary for the Authority to comply with the terms of its agreement with the IOUs under the Decision.

**10092.2(c)(5)(A):** This provision is necessary for the Authority to ensure that the Finance Provider Applicant and Marketing Representative are not subject to any regulatory sanction that would impair its ability to fulfill its obligations as a Finance Provider Entity under the Program.

**10092.2(c)(5)(B):** This provision is necessary to ensure that the Finance Provider Applicant and Marketing Representative have entered into a binding and enforceable contract with the Authority.

**10092.2(c)(5)(C):** This provision is necessary to ensure Finance Provider Applicants and Marketing Representatives that do not qualify as Financial Institutions will comply with additional Program requirements detailed in Section 10092.3 to provide a level of oversight to ensure better consumer protection and protect ratepayer funds.

**10092.2(c)(5)(D):** This provision is necessary for the Finance Provider Applicant to agree that these regulations constitute a lender services agreement between it and the Authority once it is enrolled in the Program, as required by the Authority's contract with the IOUs under the Decision.

**10092.2(c)(5)(E):** This provision is necessary for the Finance Provider Applicant and Marketing Representative to agree to follow all Program rules while participating as a Finance Provider Entity, once it is enrolled in the Program.

**10092.2(c)(5)(F):** This provision is necessary for the Authority to perform an audit of the Finance Provider Entity and Marketing Representative's records related to Enrolled Financing Agreements to ensure it is abiding by Program rules, providing an adequate level of customer service, and that all marketing materials are accurately portraying the Authority, the Program, the state of California, and its relationship to each. Audits are necessary to ensure the Program is being implemented appropriately.

**10092.2(c)(5)(G):** This provision is necessary to explicitly limit the liability of the state of California to matters over which it has control, namely, the Loss Reserve Accounts.

**10092.2(c)(6)(A):** This provision is necessary for the Primary Finance Provider Applicant to certify that it will secure and provide all certifications, documentation, and data for Projects and Eligible Financing Agreements required by the regulations to the Authority when submitting forthcoming Eligible Financing Agreements for enrollment in the Program. This is necessary so that the Authority can verify compliance with Program regulations and the approved financing

product terms for the Finance Provider Entity and so that all financing enrollments are submitted by one Program participant. It is also necessary to enable the Authority to track repayment performance and aggregate information to analyze and improve the impact and reach of the Program.

**10092.2(c)(6)(B):** This provision is necessary ensure for all forthcoming Eligible Financing Agreements submitted or enrollment the Eligible Commercial Financing Customers receive a Bill Impact Estimate so that they have information about the anticipated benefits of installing Energy Saving Measures when evaluating the financial decision about whether to proceed with a Project, and to comply with the Decision.

**10092.2(c)(6)(C):** This provision is necessary for the Primary Finance Provider Applicant to certify that all forthcoming Eligible Financing Agreements submitted for enrollment will comply with Program rules.

**10092.2(c)(6)(D):** This provision is necessary to ensure that the Primary Finance Provider Applicant agrees not to include any Distributed Generation in the calculation of the Claim-Eligible Financed Amount of any forthcoming Eligible Financing Agreement submitted for Program enrollment. This provision is necessary for compliance with the Decision.

**10092.2(c)(6)(E):** This provision is necessary for the Primary Finance Provider Applicant to agree to fund every forthcoming Eligible Financing Agreement submitted for enrollment in the Program, ensuring that ratepayer funds are being used promptly to enhance energy efficiency financing agreements and to ensure accurate recordkeeping.

**10092.2(c)(6)(F):** This provision is necessary to quickly and completely recapture any over-funding of Loss Reserve Accounts to protect ratepayer funds in the event that an Eligible Financing Agreement is not entirely funded as submitted for enrollment. It is necessary to provide this flexibility to accommodate standard industry practices.

**10092.2(c)(7)(A):** This provision is necessary to ensure accurate record retention, which will assist the Authority to perform an audit of the Finance Provider Entity and Marketing Representative relating to Enrolled Financing Agreements for accuracy, repayment performance, and compliance with Program regulations and industry best practices. It is also necessary to require the Finance Provider Entity and Marketing Representative to retain these records for the entire term of the financing so that the Authority can approve claims and verify correct payment amounts for them.

**10092.2(c)(7)(B):** This provision is necessary to ensure that the Finance Provider Applicant and Marketing Representative promise to disclose all relevant and required information about each Enrolled Financing Agreement to the Eligible Commercial Financing Customer, so that it remains up to date with its repayment status and balance and can make informed financial decisions for its business.

**10092.2(c)(7)(C):** This provision is necessary to ensure that the Finance Provider Entity and Marketing Representative maintain uninterrupted regulatory oversight and do not commit any financial crimes or violations that impair their ability to fulfill obligations under the Program.

**10092.2(c)(7)(D):** This provision is necessary to protect ratepayer funds by ensuring that neither the Authority and IOUs, nor any persons or entities acting on their behalves are liable for losses or claims from arising from factors outside of their control. This provision is required for the Authority to comply with its contract with the IOUs under the Decision.

**10092.2(c)(7)(E):** This provision is necessary to protect the IOUs from any liabilities arising from the Program's requirements, participants, or operations, because they are not directly involved in the implementation or administration of the Program, and are not affiliated with the Authority beyond what was directed in the CPUC Decision. This provision is required for the Authority to comply with its contract with the IOUs under the Decision.

**10092.2(d):** This provision is necessary to ensure that the Authority reviews applications and provides feedback, instructions, and approval decisions to Finance Provider Applicants in a timely and effective manner. The response time of fifteen business days was chosen to align with common industry practices and the Authority's experience administering similar programs, and prevents undue delay while allowing sufficient time to thoroughly review applications. This provision is also necessary to prevent complications from disputes or appeals by making the Authority's acceptance decision final.

**10092.2(e):** This provision is necessary to provide the Finance Provider Entity the flexibility to update their product offerings or terms, but maintains the Authority's oversight and ensures compliance of financing products with Program requirements, consumer protections, and protection of ratepayer funds.

**10092.2(f)(1-2):** These provisions are necessary to provide a clear process under which a finance company may withdraw from the Program. Multiple withdrawal options provide additional flexibility, while ensuring that withdrawal is voluntary, binding, and legally enforceable. The first option is necessary to allow the Finance Provided Entity to withdraw from the Program entirely. However, doing so means that ratepayer funds in their Loss Reserve Accounts are no longer active, so it is necessary to recapture those funds to make them available for new financings. The second option is necessary because if the Finance Provider Entity continues to uphold reporting requirements for already enrolled financings, the Authority continues to receive the repayment performance data needed to analyze Program impact, and they may retain access to the Loss Reserve Account.

**10092.2(f)(3):** This provision is necessary to give the Authority the ability to effectively remove a Finance Provider Entity if it has been noncompliant, and establishes a process for that removal that is binding, legally enforceable, and in accordance with best practices. This provision is also necessary to specify the types of violations, sanctions, failures, and bad acts that may compromise the Program and justify termination.

**10092.2(f)(4-6):** These provisions are necessary to limit further exposure from a terminated Finance Provider Entity, while leveraging existing Loss Reserve Account funds to compel the Finance Provider Entity continue reporting on previous Enrolled Financing Agreements, or recapture Loss Reserve Account funds to protect the funds if continued reporting does not occur. It is necessary to encourage this continued reporting because repayment performance is one of the primary benchmarks of the Program’s success, and the Program requires active participation from its partners.

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

The Authority relied on experts from both the public and private sectors, and rules and regulations for similar programs in California and other states to develop the definitions used in this section. In addition, the Authority relied on direct discussions with current and former staff from other states or programs with similar programs. The eligibility criteria, as defined in this regulation, were established in consultation with the California Public Utilities Commission, investor owned utilities staff, and other stakeholders. The Authority relied upon the Decision and the following related CPUC documents (subsequently referred to collectively throughout this document as the “Proceeding”) in proposing the adoption of this regulation:

- Decision 13-09-044, Decision Implementing 2013-14 Energy Efficiency Financing Pilot Programs (the “Decision”), issued September 20, 2013
- 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, issued September 11, 2014
- Administrative Law Judge’s Ruling regarding Changes to Decision 13-09-044, issued July 23, 2015
- Assigned Commissioner’s Ruling Extending Pilot Programs, issued August 25, 2014
- Decision 15-06-008 Modifying Decision 13-09-044, Issued June 11, 2015
- Administrative Law Judge’s Ruling Requesting Comments on Harcourt Brown & Carey Revised Recommendation Regarding Energy Efficiency Equipment Lease financing, issued July 23, 2015
- Decision 15-12-002, Modifying Decision 13-09-044, Issued December 3, 2015
- Decision 17-03-026, Decision Addressing Energy Efficiency Financing Pilot Programs Originally Ordered in Decision 13-09-044, Issued March 23, 2017
- Resolution E-4900, Adopts metrics as tools to contribute to the determination of the long-term viability of energy efficiency finance pilots, December 14, 2017

The Authority relied upon the following documents and studies (subsequently referred to collectively throughout this document as the “Studies”) in proposing the adoption of this regulation:

- Energy Efficiency Financing Implementation Primer (DOE SEE Action, January 2014)
- Financing Energy Improvements on Utility Bills (DOE SEE Action, May 2014)
- Energy Efficiency Finance Programs-Use Case Analysis (DOE SEE Action, July 2014)
- California Energy Efficiency Finance Data Working Group Final Report (California Energy Efficiency Finance Data Working Group, December 2013)
- Getting the Biggest Bang for the Buck - Exploring the Rationales and Design Options for Energy Efficiency Financing Programs (LBNL, December 2013)

- Using Financing to Scale Up Energy Efficiency (DOE SEE Action, July 2013)
- Recommendations for Energy Efficiency Finance Pilot Programs (Harcourt Brown & Carey, October 2012)
- Interactions Between Energy Efficiency Programs Funded Under the Recovery Act and Utility funded Energy Efficiency Programs (LBNL, March 2011)
- PG&E Energy Upgrade California 2013-2014 Home Upgrade Participant Handbook, version 4.2, July 2, 2014
- Opinion Dynamics and Dunskey Energy Consulting, Final CPUC REEL Pilot Impact Evaluation Considerations, December 29, 2017
- Transforming Small Business Participating in Energy Efficiency: Driving Energy Savings with a Progressive Approach to Small Business Direct Install Program, (Nexant, 2013)
- Big Opportunities for Small Business: Successful Practices of Utility Small Commercial Energy Efficiency Program (American Council For an Energy-Efficiency Economy, November 2016)

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, or Participating Contractors. During the emergency regulation rulemaking process the Authority conducted extensive stakeholder engagement and research in the pre-rulemaking process, undertook extensive internal deliberation, and learned lessons from early Program implementation; significant alternatives considered are discussed below:

**10092.2(a):** As mentioned in Section 10092.1(gg) above, the Authority considered restricting participation to one finance entity, but rejected this option because it did not want to limit participation, but conversely desires to expand and encourage participation by a number of financing business structures. Feedback from Program stakeholders has shown that a variety of finance company and financing structures exist within the commercial energy efficiency financing market – including emerging structures – which include multiple companies partnering to offer various financing structures/products.

**10092.2(b)(7):** As mentioned in Section 10092.1(pp) above, the Authority considered excluding a third party Marketing Representative from Program participation but rejected this option to accommodate companies who offer financing of “white label” products through an energy services company (ESCO) or other like partner and it desires to expand and encourage participation by a number of financing business structures. Input from Program stakeholders has shown that a variety of finance company and financing structures exist within the commercial energy efficiency financing market – including emerging structures – which include multiple companies partnering to offer various financing structures/products.

**10092.2(c)(2)(C):** The Authority considered excluding a requirement that the Finance Provider Applicant provide the name of the entity funding the Projects that are to be enrolled in the

Program but decided to reject this option because of the value to the Authority in knowing the source of funds used to capitalize Projects, to better evaluate Program impact.

**10092.2(c)(2)(D):** The Authority considered excluding a requirement that the Finance Provider Applicant provide the name of financing agreement counterparties named on the closing documents but the Authority rejected this option because of the value to the Authority in knowing what entity is entering into financing agreements with Eligible Commercial Financing Customers, and establish appropriate Program oversight.

**10092.2(c)(2)(E):** The Authority considered excluding a requirement that the Finance Provider Applicant provide the name of the entity that will be assigned repayment streams from Program financing agreements but rejected this option to ensure appropriate Program oversight and assess how the Program might affect the secondary market and which entity the credit enhancement may benefit.

**10092.2(c)(2)(F):** The Authority considered excluding a requirement that the Finance Provider Applicant provide their intent with regard to Enrolled Financing Agreements but rejected this option because of the value to the Authority in knowing how the Program might affect the secondary market and better assess overall Program impact.

**10092.2(c)(6)(E):** The Authority considered both more and fewer days to fund the Claim-Eligible Financed Amount, but these other options were rejected upon the determination that 30 calendar days is a reasonable balance between providing sufficient time for the Finance Provider Entity to process and fund a financing agreement and timely submittal of financing documents which assists the Authority in implementing the Program and accounting for credit enhancement funds.

**10092.2(c)(6)(F):** The Authority considered both more and fewer days for the Finance Provider Entity to inform the Authority that it decided not to fund the entirety of the Claim-Eligible Financed Amount, but these other options were rejected upon the determination that 10 business days is a reasonable balance between providing sufficient time for the Finance Provider Entity to determine not to fund the entirety of the Claim-Eligible Financed Amount and the burden of the Authority to administer the Program and safeguard ratepayer funds associated with credit enhancements for the claim-eligible amount actually financed.

**10092.2(d):** The Authority considered both more and fewer days for application review timetable, but these other options were rejected upon the determination that 15 business days is a reasonable balance between providing sufficient time for the Authority's due diligence and providing responsive service to Finance Provider Applicants.

**10092.2(f)(3)(C):** The Authority did not initially consider including a provision that allows for a Finance Provider Entity's enrollment in the Program to be terminated due to inactivity. However, in its experience in administering a similar program, it found that it was necessary to include such a measure to: a) ensure lenders interested in the Program remain motivated to participate and establish the necessary infrastructure to provide the financing; b) to reduce the Authority's costs and administrative burden of supporting an inactive Finance Provider Entity.

**10092.2(f)(3)(D):** The Authority considered both more and less time before a Finance Provider Entity is non-compliant with this reporting requirement, but these other options were rejected upon the determination that 60 calendar days is a reasonable balance between providing sufficient time for the Finance Provider Entity and providing the Authority with timely data to ensure compliance, and to lessen the administrative burden to the Authority associated with continuing to support an inactive and non-compliant finance company.

**10092.2(f)(6):** The Authority considered both more and fewer days before a terminated Finance Provider Entity is non-compliant with this reporting requirement, but these other options were rejected upon the determination that 60 days is a reasonable balance between providing sufficient time for the Finance Provider Entity to report on Enrolled Financing Agreements and the administrative burden to the Authority associated with the support and compliance of an inactive finance company.

6. Alternatives to the Proposed Regulation Action that Would Lesson 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 Eligible Financing Customer's investment in energy efficiency improvements for their businesses.

## **SECTION 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.

Expanding the volume of available financing requires engaging with a variety of private finance entities, including those that may not meet the definition of Financial Institution in this Article. In order to ensure an adequate level of standards, experience, and qualifications of lenders participating in the Program and safeguard customers and ratepayer funds, all Finance Provider Entities must demonstrate their qualifications. This section establishes standards and requirements for Finance Provider Entities that are not for Financial Institutions.

2. Specific Purpose of the Regulation.

The purpose of this section is to set additional standards and requirements for a non-Financial Institution applicant's qualifications, insurance, quality control systems, and net worth when applying for enrollment in the Program.

**10092.3(a):** The purpose of this provision is to require that the non-Financial Institution Finance Provider Applicant demonstrate to the Authority a minimum net worth of \$1 million.

**10092.3(b):** The purpose of this provision is to require that the non-Financial Institution Finance Provider Applicant demonstrate to the Authority that it maintains adequate quality control and management systems to evaluate and monitor the quality of its financing related activities, including consumer complaint and risk management procedures.

**10092.3(c)(1):** The purpose of this provision is to require the non-Financial Institution Finance Provider Applicant that will fill the Program role of Underwriting to provide to the Authority a description of its experience underwriting commercial financing.

**10092.3(c)(2):** The purpose of this provision is to require the non-Financial Institution Finance Provider Applicant that will fill the Program role of Underwriting to provide to the Authority a description of its experience with equipment financing and the coordination of it with contractors and businesses.

**10092.3(c)(3):** The purpose of this provision is to require the non-Financial Institution Finance Provider Applicant that will fill the Program role of Underwriting to provide to the Authority a description of its established underwriting processes.

**10092.3(c)(4):** The purpose of this provision is to require the non-Financial Institution Finance Provider Applicant that will fill the Program role of Underwriting to provide the Authority a descriptions of its underwriting qualifications and details about key positions and their job duties related to its underwriting.



**10092.3(d)(1):** The purpose of this provision is to require the non-Financial Institution Finance Provider Applicant that will fill the Program role of Origination to provide the Authority proof of at least \$20 million in committed capital committed for general financing activities.

**10092.3(d)(2):** The purpose of this provision is to require the non-Financial Institution Finance Provider Applicant that will fill the Program role of Origination to provide the Authority a description of its resources, personnel, and expertise to originate commercial financing, and to do so in accordance with applicable finance laws.

**10092.3(d)(3):** The purpose of this provision is to require the non-Financial Institution Finance Provider Applicant that will fill the Program role of Origination to provide the Authority a description of its experience with equipment financing and the coordination of it with contractors and businesses.

**10092.3(d)(4):** The purpose of this provision is to require the non-Financial Institution Finance Provider Applicant that will fill the Program role of Origination to provide the Authority proof of at least 20 transactions originated or at least \$20 million in originated transactions.

**10092.3(d)(5):** The purpose of this provision is to require the non-Financial Institution Finance Provider Applicant that will fill the Program role of Origination to provide the Authority samples of its transaction documentation.

**10092.3(e)(1):** The purpose of this provision is to require the non-Financial Institution Finance Provider Applicant that will fill the Program role of Servicing to provide the Authority a description of its capacity for and experience with servicing its proposed types of products, and its general customer service.

**10092.3(e)(2):** The purpose of this provision is to require the non-Financial Institution Finance Provider Applicant that will fill the Program role of Servicing to provide to the Authority a description of its key positions and their job duties, software, and systems used for servicing Enrolled Financing Agreements.

**10092.3(f)(1):** The purpose of this provision is to require the non-Financial Institution Finance Provider Applicant to maintain and provide evidence of general liability insurance of not less than \$1 million per occurrence for bodily injury and property damage combined, that applies separately to each insured against whom a claim is made or suit is brought. It further requires coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability issued assumed under an insured contract. Furthermore, the policy must include the State of California, its officers, agents, employees, and servants as additional insureds insofar as operating under the Program regulations.

**10092.3(f)(2):** The purpose of this provision is to require the non-Financial Institution Finance Provider Applicant to maintain and provide evidence of motor vehicle liability insurance of not less than \$1 million per accident and that the insurance cover liability arising out of owned, hired, and non-owned motor vehicles.

**10092.3(f)(3):** The purpose of this provision is to require the non-Financial Institution Finance Provider Applicant to maintain and provide evidence of statutory workers' compensation and employer's liability coverage of not less than \$1 million for all of its employees who will be engaged in the Program, including special coverage extensions where applicable.

**10092.3(f)(4):** The purpose of this provision is to require the non-Financial Institution Finance Provider Applicant to maintain all insurance coverage for the complete term in which it will be enrolled in the Program as a Finance Provider Entity, and that a certificate for new insurance meeting the requirements in the regulations must be received by the Authority for any insurance expiring while enrolled, at least ten business days before the expiration date.

**10092.3(f)(5):** The purpose of this provision is to require the non-Financial Institution Finance Provider Applicant to notify the Authority in writing at least thirty days prior to cancelling any insurance.

**10092.3(f)(6):** The purpose of this provision is to establish that the non-Financial Institution Finance Provider Entity is responsible for any deductible or self-insured retention contained within its insurance policy.

**10092.3(f)(7):** The purpose of this provision is to obligate the non-Financial Institution Finance Provider Entity to maintain the insurance coverage specified in the regulations, and empower the Authority to terminate the Finance Provider Entity's participation in the Program, among other remedies, for not fulfilling this obligation.

**10092.3(f)(8):** The purpose of this provision is to establish that any insurance required in the Program regulations be primary to any insurance carried by the Authority rather than excess to it.

**10092.3(g)(1):** The purpose of this provision is to obtain a representation, warranty, and covenant from the Finance Provider Applicant and, if applicable, the Marketing Representative that they are entities with the legal authority to own its properties, and conduct their business.

**10092.3(g)(2):** The purpose of this provision is to obtain a representation, warranty, and covenant from the Finance Provider Applicant and, if applicable, the Marketing Representative that they have the necessary licenses and approvals to lease or own property or to conduct business.

**10092.3(g)(3):** The purpose of this provision is to obtain a representation, warranty, and covenant from the Finance Provider Applicant and, if applicable, the Marketing Representative that they have the legal authority to execute and carry out the terms of the Program.

**10092.3(g)(4):** The purpose of this provision is to obtain a representation, warranty, and covenant from the Finance Provider Applicant and, if applicable, the Marketing Representative that they are in good legal standing within the jurisdictions they conduct business, free of any current or potential proceedings or investigations that may assert the invalidity of the Program regulations or impair its ability to perform or participate in the Program.

**10092.3(h)(1):** The purpose of this provision is to obtain a representation, warranty, and covenant from the Finance Provider Applicant that it has and will continue to have while enrolled in the Program the necessary resources to meet the requirements to perform the Program roles of Underwriting, Origination, and Servicing as a Finance Provider Entity, including qualified employees, facilities, and the systems needed.

**10092.3(h)(2):** The purpose of this provision is to obtain a representation, warranty, and covenant from the Finance Provider Applicant filling the Program role of Servicing that it has and will continue to have while enrolled in the Program a written plan to continue operations in the event of a disaster, including data backup and recovery and alternate facilities and systems to ensure continuous operations. This provision also obtains a guarantee that the Authority may inspect those plans and facilities at no additional cost.

**10092.3(h)(3):** The purpose of this provision is to obtain a representation, warranty, and covenant from the Finance Provider Applicant filling the Program role of Origination that it has and will continue to have while enrolled in the Program internal audit and management control systems to guard against dishonesty, fraud, and negligence committed by its employees and contractors involved in the origination process.

### 3. Necessity.

Financial Institutions, as defined in these regulations, abide by state and/or federal insurance and financial regulatory requirements that guarantee their financial viability. This section is necessary in order to attract additional private capital by providing a path for non-Financial Institutions to participate in the Program, while ensuring the qualifications of those non-Financial Institution finance companies are adequate and provide a level of oversight to better ensure consumer protection and protect ratepayer funds. It is also necessary to outline Program requirements for finance entity participation to provide applicants with clear information and expectations. The provision of standardized detailed information will create uniformity in the information the Authority collects when reviewing applications, which ensures equitable treatment of market actors. The requirements in this section are necessary to better ensure Program participants operate under industry standards and have the necessary business infrastructure, track record, and experience to bring value and reliability to Eligible Commercial Financing Customers under the Program.

**10092.3(a):** This provision is necessary to ensure that non-Financial Institution Finance Provider Applicants are financially viable business entities with the resources necessary to maintain stable participation in the Program. The threshold of at least \$1 million net worth was determined through research of similar programs and input from industry consultants and strikes a balance between providing an indication of business strength and being so restrictive that it precludes Program participation.

**10092.3(b):** This provision is necessary to ensure the quality of Enrolled Financing Agreements thereby minimizing the claims paid out with the Program's ratepayer funds. It is necessary to ensure basic industry standards will be met, thereby protecting ratepayer funds. It is necessary

for the Non-Financial institution to demonstrate it implements a consumer complaint resolution process to support consumer protection and ensure it has adequate systems to handle complaints and manage risk. Implementing the industry standard is necessary to ensure a high quality portfolio of Enrolled Financing Agreements while operating under industry standards and best practices.

**10092.3(c)(1-2):** These provisions are necessary to ensure that the Finance Provider Applicant has sufficient experience underwriting commercial financial products which will help protect ratepayer funds and mitigate risk. In particular, these provisions are necessary to demonstrate that the Finance Provider Entity has experience to finance equipment and work with businesses and contractors. Here, the Authority is maintaining consumer protection while being flexible enough to attract new market participants. Ensuring Program partners have experience in the industry is necessary for the Program's effective implementation.

**10092.3(c)(3):** This provision is necessary to protect ratepayer funds from undue risk by ensuring that the Finance Provider Applicant has an established underwriting process that reviews a Eligible Commercial Financing Customer's creditworthiness, Projects for eligibility, and financing agreements for comprehensive compliance with Program regulations.

**10092.3(c)(4):** This provision is necessary to protect ratepayer funds from undue risk by ensuring that the persons performing underwriting for the Finance Provider Applicant have the requisite experience to conduct underwriting in accord with industry standards, including identifying acceptable and unacceptable risk.

**10092.3(d)(1):** This provision is necessary to ensure that non-Financial Institution Finance Provider Applicants are sufficiently capitalized business entities with the committed liquidity required to fund multiple concurrent financing agreements after acceptance into the Program. The threshold of at least \$20 million in committed capital was determined through research of similar programs and input from industry consultants, and ensures enough available capital resources while allowing for investor commitments and without requiring that capital be earmarked exclusively for Program deployment.

**10092.3(d)(2-4):** These provisions are necessary to ensure that the Finance Provider Applicant has sufficient experience originating commercial financial products to secure repayment obligations from Eligible Commercial Financing Customers for Enrolled Financing Agreements, abide by all applicable laws, and enforce collections and liquidations, that together reduce exposure of ratepayer funds in Loss Reserve Accounts. These requirements are necessary to meet industry standards and partner with experienced finance entities. Input from stakeholders and industry consultants determined during early Program implementation that the original amounts were too high and were reduced to the current amount. The threshold of at least 20 originated transactions or \$20 million in originated transactions was originally set at 50 originated transactions or \$50 million in funded transactions. The current amounts are necessary to ensure the Finance Provider Applicant has a minimum amount of experience and transaction history to effectively implement the Program, without preventing newer market entrants with sufficient experience but a lower amount/number of financings from enrolling in the Program.

**10092.3(d)(5):** This provision is necessary for the Finance Provider Applicant to provide samples of its origination documentation. This is necessary for the Authority to evaluate consistency and alignment with industry standards, and ensure Program processes are complete, comprehensive, and compliant with Program requirements to adequately protect consumers and ratepayer funds from undue risk.

**10092.3(e):** This provision is necessary to ensure that the Finance Provider Applicant has the requisite experience servicing their proposed financial products, to provide suitable customer service, bill and process payments reliably to secure repayment streams, and recover past due and defaulted repayments before filing a claim to reduce exposure of ratepayer funds in Loss Reserve Accounts. This provision is also necessary because the entity filling the Program role of Servicing interacts directly with Eligible Commercial Financing Customers, and the Authority has a vested interest to know that services will be adequate for the Program.

**10092.3(f):** The various insurance requirements are necessary for consistency with the state's requirements of partners. The commercial Energy Efficiency retrofit industry does have risk; these insurance requirements mitigate the Program's risk to ratepayer funds while being consistent with industry standards to ensure the Program leverages the private market.

**10092.3(f)(1):** This provision is necessary to ensure that Finance Provider Entities are operating under industry standards and best practices, and it is consistent with insurance requirements under state contracting law, as required by the Department of General Services. It is necessary to protect the Finance Provider Entity from financial liability due to losses, bodily injury, or accidental property damage resulting from Projects financed through the Program therefore preserving liquidity so that it can continue to uphold its responsibilities and obligations under the Program. It is also necessary that the policy cover other Project participants to transfer risk that otherwise may impair their ability to complete or certify work or increase costs for the Project. General liability insurance is further necessary to make Eligible Commercial Financing Customers whole in the event they incur losses, injury, or property damage during a Project. It acts as a form of consumer protection to reduce the risk for energy efficiency upgrades and participation in the Program. This provision is also necessary to extend the general liability coverage to the State of California to protect ratepayer and taxpayer funds from civil liabilities in connection with administration of the Program. The threshold of at least \$1 million was chosen based on input from stakeholders, trade allies, Program requirements, and industry standards.

**10092.3(f)(2):** This provision is necessary to extend the protections of general liability to motor vehicles used in connection with Projects or participation in the Program in order to protect the Finance Provider Entity from liability due to losses, bodily injury, or accidental property damage therefore preserving liquidity so that it can continue to uphold its responsibilities and obligations under the Program, consistent with industry standards and best practices, insurance requirements under state contracting law, and as required by the Department of General Services.

**10092.3(f)(3):** This provision is necessary to extend the protections of general liability to include coverage for Finance Provider Entity employees who are injured during a Project or participation in the Program, regardless of fault. Special coverage extensions are necessary to additionally protect contracted employees and the industry practice of having workers for a Project on loan

from another, often affiliated, company. Policy limits of \$1 million align with requirements of state contracting.

**10092.3(f)(4):** This provision is necessary to ensure that the Finance Provider Entity maintains the required insurance coverage at all times that it is enrolled and participating in the Program without any gaps, and that the Authority is kept abreast of any renewals or changes to its insurance policy. The period of ten business days before expiration is chosen to align with other submittal, review, and response times by the Authority detailed in the regulations and to provide the Finance Provider Entity enough time procure new coverage and to notify the Authority.

**10092.3(f)(5):** This provision is necessary to ensure that the Authority is aware of and can monitor upcoming changes to the Finance Provider Entity's insurance coverage. The period of thirty days was chosen to ensure that the Finance Provider Entity has a period of at least one billing cycle to shop for and procure a new policy to preserve continued and uninterrupted participation in the Program.

**10092.3(f)(6):** This provision is necessary to protect the Authority and ratepayer funds from any civil action or claim by a Finance Provider Entity for reimbursement of insurance deductibles related to a Project or participation in the Program, and limit the liability of the Authority to what is under its direct control and specified as its Loss Reserve Contribution in the regulations.

**10092.3(f)(7):** This provision is necessary to give the Authority the ability to effectively remove a Finance Provider Entity if it fails to maintain uninterrupted compliance with insurance coverage requirements in the regulations, thereby exposing the Authority or Program participants to potential liability and opening themselves to insolvency risk and their Eligible Commercial Financing Customers to unrecoverable loss, injury, or property damage. This provision is further necessary because non-compliant organizations place an undo administrative and financial burden on the Authority and it is essential for a process to be in place to remove them from Program when such non-compliance occurs.

**10092.3(f)(8):** This provision is necessary to ensure that any insurance held by the Finance Provider Entity will be the first recourse in the event of an insurance claim, and not secondary nor excess to any coverage the Authority may additionally or separately carry of its own.

**10092.3(g)(1):** This provision is necessary to ensure that the Finance Provider Applicant, and the Marketing Representative if applicable, is a valid entity that is allowed to exist and operate as a company in California, and is subject to enforcement of these regulations. It is also necessary that the Finance Provider Applicant have the capacity to participate in the Program.

**10092.3(g)(2-3):** These provisions are necessary to ensure that the Finance Provider Applicant, and the Marketing Representative if applicable, is qualified to exist and operate as a finance company and has the regulatory approval required to deliver on its proposed financing products and services, and fulfill its obligations for participation in the Program. This requirement is necessary to safeguard against fraud and help ensure best practices.

**10092.3(g)(4):** This provision is necessary to ensure that the Program regulations in this Article remain valid, binding, and enforceable, and that no court or other government body will be asked to void, inhibit, or supplant the requirements in the regulations, or undermine the relationship between the Finance Provider Applicant and the Program. It is also necessary to ensure the Finance Provider Applicant is and remains accountable to its obligations under the regulations.

**10092.3(h)(1):** This provision is necessary to ensure that the Finance Provider Applicant has and will continue to have the capacity and resources to enroll new Eligible Financing Agreements and fulfill its ongoing obligations to service Enrolled Financing Agreements. This is necessary to maintain deal flow, uphold quality standards on new financings, and provide ongoing consumer protection and customer support.

**10092.3(h)(2):** This provision is necessary to ensure precautions are taken to minimize the effects of unplanned incidents, identify threats, and eliminate vulnerabilities to protect customers, preserve data integrity, and ensure continuity of operations while participating in the Program. Continuity of servicing operations is necessary to guarantee continued billing, payment processing, and recovery of past due and defaulted repayments, thereby reducing exposure of ratepayer funds in Loss Reserve Accounts. This provision is also necessary to grant the Authority permission to review and verify the Finance Provider Entity's plan without incurring unforeseen costs.

**10092.3(h)(3):** This provision is necessary to protect against bad acts and actors within or working on behalf of the Finance Provider Applicant's organization that may adversely affect Eligible Commercial Financing Customers, impair the Finance Provider Entity's ability to fulfill its legal or Program obligations, or expose the Authority or ratepayer funds to undue risk or liability.

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

The Authority relied on experts from both the public and private sectors, and rules and regulations for similar programs in California and other states to develop the definitions used in this section. In addition, the Authority relied on direct discussions with current and former staff from other states or programs with similar programs. The eligibility criteria, as defined in this regulation, were established in consultation with the California Public Utilities Commission, investor owned utilities staff, and other stakeholders. The Authority relied upon the Decision and the following related CPUC documents (subsequently referred to collectively throughout this document as the "Proceeding") in proposing the adoption of this regulation:

- Decision 13-09-044, Decision Implementing 2013-14 Energy Efficiency Financing Pilot Programs (the "Decision"), issued September 20, 2013
- 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, issued September 11, 2014
- Administrative Law Judge's Ruling regarding Changes to Decision 13-09-044, issued July 23, 2015
- Assigned Commissioner's Ruling Extending Pilot Programs, issued August 25, 2014
- Decision 15-06-008 Modifying Decision 13-09-044, Issued June 11, 2015

- Administrative Law Judge’s Ruling Requesting Comments on Harcourt Brown & Carey Revised Recommendation Regarding Energy Efficiency Equipment Lease financing, issued July 23, 2015
- Decision 15-12-002, Modifying Decision 13-09-044, Issued December 3, 2015
- Decision 17-03-026, Decision Addressing Energy Efficiency Financing Pilot Programs Originally Ordered in Decision 13-09-044, Issued March 23, 2017
- Resolution E-4900, Adopts metrics as tools to contribute to the determination of the long-term viability of energy efficiency finance pilots, December 14, 2017

The Authority relied upon the following documents and studies (subsequently referred to collectively throughout this document as the “Studies”) in proposing the adoption of this regulation:

- Energy Efficiency Financing Implementation Primer (DOE SEE Action, January 2014)
  - Financing Energy Improvements on Utility Bills (DOE SEE Action, May 2014)
  - Energy Efficiency Finance Programs-Use Case Analysis (DOE SEE Action, July 2014)
  - California Energy Efficiency Finance Data Working Group Final Report (California Energy Efficiency Finance Data Working Group, December 2013)
  - Getting the Biggest Bang for the Buck - Exploring the Rationales and Design Options for Energy Efficiency Financing Programs (LBNL, December 2013)
  - Using Financing to Scale Up Energy Efficiency (DOE SEE Action, July 2013)
  - Recommendations for Energy Efficiency Finance Pilot Programs (Harcourt Brown & Carey, October 2012)
  - Interactions Between Energy Efficiency Programs Funded Under the Recovery Act and Utility funded Energy Efficiency Programs (LBNL, March 2011)
  - PG&E Energy Upgrade California 2013-2014 Home Upgrade Participant Handbook, version 4.2, July 2, 2014
  - Opinion Dynamics and Dunskey Energy Consulting, Final CPUC REEL Pilot Impact Evaluation Considerations, December 29, 2017
  - Transforming Small Business Participating in Energy Efficiency: Driving Energy Savings with a Progressive Approach to Small Business Direct Install Program, (Nexant, 2013)
  - Big Opportunities for Small Business: Successful Practices of Utility Small Commercial Energy Efficiency Program (American Council For an Energy-Efficiency Economy, November 2016)
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, or Participating Contractors. During the emergency regulation rulemaking process the Authority conducted extensive stakeholder engagement and research in the pre-rulemaking process, undertook extensive internal deliberation, and learned lessons from early Program implementation; significant alternatives considered are discussed below:



**10092.3(a):** It was suggested that the \$1 million net worth requirement was too high but this suggestion was rejected because the Authority believes this is an appropriate measure of financial stability and establishes a level of consumer protection under the Program. It is important to have financially stable Finance Provider Entities in order to provide consumer protections and safeguards on ratepayer funds utilized for the credit enhancement.

**10092.3(d)(1):** It was suggested that the \$20 million committed capital requirement was too high but this suggestion was rejected because the Authority believes this is an appropriate measure of investor confidence in the Finance Provider Applicant, which strengthens the Program's consumer protection measures.

**10092.3(d)(4):** When these regulations were initially adopted as emergency regulations, this requirement was set at 50 transactions or \$50 million in funded transactions. It was suggested by industry stakeholders that the requirement was set too high and was impairing Program participation by certain finance companies. Based on this feedback, the Authority changed this requirement to 20 transactions or \$20 million in originated transactions, which balances the goal of bringing new financial entrants into the marketplace while ensuring Program participants have adequate experience.

**10092.3(f):** When these regulations were initially adopted as emergency regulations, the general liability insurance requirements were set at limits of no less than \$2 million per occurrence. It was suggested by industry stakeholders that the requirement was set too high and was impairing Program participation by certain finance companies and that \$1 million in coverage per occurrence was the industry standard. Based on this feedback, the Authority changed this requirement to require no less than \$1 million in general liability insurance, which balances the goal of bringing new financial entrants into the marketplace while providing appropriate consumer protection.

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 Customer's investment in energy efficiency improvements for their businesses.

## **SECTION 10092.4. CONTRACTOR AND PROJECT DEVELOPER PARTICIPATION**

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

As stated in the Decision, “some minimum threshold of capacity to perform the work should be established” to encourage confidence in investment in Energy Efficiency and achieve energy savings. 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, and encourages confidence in measures that are installed.

### **2. Specific Purpose of the Regulation.**

The purpose of this section is to establish the Participating Contractor and Participating Project Developer requirements and responsibilities for participation in the Program. It specifies the information and qualifications required of an Eligible Contractor or Eligible Project Developer, including a review of its proposed services and qualifying experience to complete Projects that deliver energy savings to Eligible Commercial Financing Customers. The section also establishes necessary acknowledgements, certifications, and thresholds of general liability insurance, and outlines the processes for Participating Contractors and Participating Project Developers to withdraw from the Program.

**10092.4(a)(1):** The purpose of this provision is to establish the requirement for Participating Contractor to be a California licensed contractor company that installs the Energy Saving Measures and/or Non-ESMs on a Project, and provides Project data and certifications as required by the regulations.

**10092.4(a)(2):** The purpose of this provision is to establish the requirement of a Participating Project Developer to be an individual or entity who develops Scopes of Work for the Eligible Commercial Financing Customer, facilitates data exchange between participants of a Project, and provides Project data and certifications as required by the regulations. This provision also establishes that a Participating Project Developer does not perform installations on a Project, but may also apply to be a Participating Contractor if it has the requisite CSLB license to do so.

**10092.4(a)(3):** The purpose of this provision is to specify the scenarios of when Participating Contractors or a Participating Project Developer are required to complete a Project. This includes specifying that a Participating Contractor is required on all Projects unless the Project is completely self-installed, and a Participating Project Developer is only required on a Project that has a self-installed measure.

**10092.4(b)(1)(A):** The purpose of this provision is to require an Eligible Contractor to be able to provide installation services of at least one measure on the ESM List to participate in the Program as a Participating Contractor.

**10092.4(b)(1)(B):** The purpose of this provision is to require that an Eligible Contractor complete a training course made available by the Authority to participate in the Program as a Participating Contractor.

**10092.4(b)(1)(C):** The purpose of this provision is to require an Eligible Contractor to submit a complete application to the Authority to participate in the Program as a Participating Contractor.

**10092.4(b)(1)(D):** The purpose of this provision is to prevent employees of the Eligible Commercial Financing Customer from participating in the Program as a Participating Contractor.

**10092.4(b)(1)(E):** The purpose of this provision is to prevent an Eligible Contractor with outstanding judgements or liens from participating in the Program.

**10092.4(b)(1)(F):** The purpose of this provision is to prevent an Eligible Contractor with any disciplinary actions against its license within the past twenty-four months from participating in the Program as a Participating Contractor.

**10092.4(b)(1)(G):** The purpose of this provision is to require an Eligible Contractor to hold an appropriate CSLB license to perform work as a Participating Contractor in the Program.

**10092.4(b)(1)(H):** The purpose of this provision is to require that an Eligible Contractor hold general liability insurance of at least \$1 million per occurrence in order to participate in the Program as a Participating Contractor.

**10092.4(b)(2)(A):** The purpose of this provision is to require that an Eligible Project Developer complete a training course made available by the Authority to participate in the Program as a Participating Contractor.

**10092.4(b)(2)(B):** The purpose of this provision is to require an Eligible Project Developer to submit a complete application to the Authority to participate in the Program as a Participating Contractor.

**10092.4(b)(2)(C):** The purpose of this provision is to prevent an Eligible Project Developer with outstanding judgements or liens from participating in the Program.

**10092.4(b)(2)(D):** The purpose of this provision is to require that an Eligible Project Developer hold general liability insurance of at least \$1 million per occurrence in order to participate in the Program as a Participating Project Developer.

**10092.4(b)(2)(E):** The purpose of this provision is to require the Eligible Project Developer to demonstrate that it has completed at least ten projects as a project developer, or that it has a contract as an IOU, REN, or CCA Energy Efficiency or Demand Response implementer at the time of its application to participate in the Program as a Participating Project Developer.

**10092.4(c)(1):** The purpose of this provision is to specify the required data points, acknowledgements, certifications, proof of insurance, and signatory for an Eligible Contractor's application submitted to the Authority for participation in the Program to be complete.

**10092.4(c)(2)(A-C):** The purpose of these provisions is to specify the required data points, acknowledgements, certifications, and proof of insurance for an Eligible Project Developer's application to be complete.

**10092.4(c)(2)(D):** The purpose of this provision is to specify that for the Eligible Project Developer's application submitted to the Authority for participation in the Program to be complete, it must demonstrate completion of at least ten projects as a project developer, or verify it is a IOU, REN, or CCA Energy Efficiency or Demand Response implementer. This provision further requires that if the Eligible Project Developer is an implementer for an IOU, REN, or CCA it must provide the name of the IOU, REN, or CCA, the name of the Energy Efficiency or Demand Response program, and the term of its implementer contract.

**10092.4(c)(2)(E):** The purpose of this provision is to require that in order for an Eligible Project Developer's application for participation in the Program to be complete it must be signed by be an individual authorized to legally bind the Eligible Project Developer.

**10092.4(c)(3):** The purpose of this provision is to detail the required data points an Eligible Contractor must supply on its application submitted to the Authority for participation in the Program.

**10092.4(c)(3)(A-C):** The purpose of these provisions is to supply the required identifying and contact information for the Eligible Contractor and its contact person that must be submitted to the Authority, and the required identifying and contact information that the Eligible Contractor will make publicly available for sales and marketing purposes.

**10092.4(c)(3)(D):** The purpose of this provision is to require the Eligible Contractor to supply its CSLB license number(s) and type(s) that are relevant to work that may be performed while participating in the Program.

**10092.4(c)(3)(E-F):** The purpose of these provisions is to supply the required identifying and contact information for the individuals authorized by the Eligible Contractor to provide, certify, and submit Project data to the Authority.

**10092.4(c)(3)(G):** The purpose of this provision is to identify what types of services the Eligible Contractor will offer while participating in the Program.

**10092.4(c)(3)(H):** The purpose of this provision is to identify in what languages the Eligible Contractor will be able to communicate with customers while participating in the Program.

**10092.4(c)(3)(I):** The purpose of this provision is to identify the geographic areas in which the Eligible Contractor will perform work if it is accepted for participation in the Program.

**10092.4(c)(3)(J):** The purpose of this provision is to establish in which IOU, REN, or CCA trade professional programs the Eligible Contractor is currently participating, if any.

**10092.4(c)(3)(K):** The purpose of this provision is establish the date on which the Eligible Contractor completed the mandatory training made available by the Authority.

**10092.4(c)(4):** The purpose of this provision is to detail the required data points an Eligible Project Developer must supply on its application submitted to the Authority for participation in the Program.

**10092.4(c)(4)(A-C):** The purpose of these provisions is to supply the required identifying and contact information for the Eligible Project Developer and its contact person that must be submitted to the Authority, and the required identifying and contact information that the Eligible Project Developer will make publicly available for sales and marketing purposes.

**10092.4(c)(4)(D-E):** The purpose of these provisions is to supply the required identifying and contact information for the individuals authorized by the Eligible Project Developer to provide and certify and submit Project data to the Authority.

**10092.4(c)(4)(F):** The purpose of this provision is to determine what types of services the Eligible Project Developer will offer while participating in the Program.

**10092.4(c)(4)(G):** The purpose of this provision is to determine in what languages the Eligible Project Developer will be able to communicate with customers while participating in the Program.

**10092.4(c)(4)(H):** The purpose of this provision is to identify the geographic areas in which the Eligible Project Developer will perform work if it is accepted for participation in the Program.

**10092.4(c)(4)(I):** The purpose of this provision is to establish in which IOU, REN, or CCA trade professional programs the Eligible Project Developer is currently participating, if any.

**10092.4(c)(4)(J):** The purpose of this provision is establish the date on which the Eligible Project Developer completed the mandatory training made available by the Authority.

**10092.4(c)(5)(A):** The purpose of this provision is to require the Eligible Contractor to acknowledge that neither it nor its representatives and agents are employed by the Authority or any of the IOUs, and they must not represent themselves as such.

**10092.4(c)(5)(B):** The purpose of this provision is to require the Eligible Contractor to acknowledge that the Authority and the State of California will have no liability to the Eligible Contractor under the Program.

**10092.4(c)(5)(C):** The purpose of this provision is to require the Eligible Contractor to acknowledge that the IOUs are not liable for Energy Efficiency improvements funded through Enrolled Financing Agreements, the assessment of potential benefits and costs associated with

those improvements, the selection of Eligible Contractors, the marketing policies or practices of the Eligible Contractor, or the Authority's education and outreach activities.

**10092.4(c)(6)(A):** The purpose of this provision is to require the Eligible Project Developer to acknowledge that neither it nor its representatives and agents are employed by the Authority or any of the IOUs, and they must not represent themselves as such.

**10092.4(c)(6)(B):** The purpose of this provision is to require the Eligible Project Developer to acknowledge formally that the Authority and the State of California will have no liability to the Eligible Project Developer under the Program.

**10092.4(c)(6)(C):** The purpose of this provision is to require the Eligible Project Developer to acknowledge formally that the IOUs are not liable for Energy Efficiency improvements funded through Enrolled Financing Agreements, the assessment of potential benefits and costs associated with those improvements, the selection of Eligible Project Developer, the marketing policies or practices of the Eligible Project Developer, or the Authority's education and outreach activities.

**10092.4(c)(7)(A):** The purpose of this provision is for the Eligible Contractor and Eligible Project Developer to certify that they are responsible for identifying and making all disclosures required under applicable finance laws.

**10092.4(c)(7)(B):** The purpose of this provision is for the Eligible Contractor and Eligible Project Developer to certify that they will comply with all applicable finance laws and tariffs, possess and maintain all required state licenses, and remain in good standing with all government authorities that have jurisdiction over them.

**10092.4(c)(7)(C):** The purpose of this provision is for the Eligible Contractor and Eligible Project Developer to certify that they will follow all Project requirements and Program rules set forth in the regulations.

**10092.4(c)(7)(D):** The purpose of this provision is for the Eligible Contractor and Eligible Project Developer to certify that they will hold, maintain, and submit proof of commercial general liability insurance of at least \$1 million per occurrence and continue to hold that coverage throughout participation in the Program.

**10092.4(c)(7)(E):** The purpose of this provision is for the Eligible Contractor and Eligible Project Developer to certify that they will allow the Authority to audit any of their records related to Projects financed by Enrolled Financing Agreements, and will supply other Project information as requested by the Authority.

**10092.4(c)(7)(F):** The purpose of this provision is for the Eligible Contractor and Eligible Project Developer to certify that they indemnify and hold the Authority harmless from any and all damages resulting from its representations, installations, services, and other activities in which they engages while participating in the Program.

**10092.4(c)(7)(G):** The purpose of this provision is for the Eligible Contractor and Eligible Project Developer to certify that they will not make false or misleading claims about the Program or engage in fraudulent or deceitful conduct in the sale or installation of measures.

**10092.4(c)(7)(H):** The purpose of this provision is for the Eligible Contractor and Eligible Project Developer to certify that they have no outstanding judgements or liens at the time of application for participation in the Program.

**10092.4(c)(7)(I):** The purpose of this provision is for the Eligible Contractor and Eligible Project Developer to certify that their employees and representatives are solely responsible for all representations made to or work performed for Eligible Commercial Financing Customers under the Program, as well as all savings estimates, sales, warranties, maintenance, and service for all installations.

**10092.4(c)(7)(J):** The purpose of this provision is for the Eligible Contractor and Eligible Project Developer to certify that all of the information provided is true and correct to the best of their knowledge.

**10092.4(c)(8):** The purpose of this provision is for the Eligible Project Developer to certify that it will comply with all Program regulations and requirements, all Projects will have comply with all Program requirements, any reported self-installed Energy Saving Measures will be installed and comply with Program requirements, and any fees it charges will be for services related to the Project, for all Projects submitted for enrollment in the Program while acting as a Participating Project Developer.

**10092.4(c)(9):** The purpose of this provision is to outline the procedural requirements and timeline for processing and responding to a submitted application from an Eligible Contractor or Eligible Project Developer for participation in the Program. It also specifies that the Authority's decision regarding enrollment is final.

**10092.4(d)(1):** The purpose of this provision is to inform Participating Contractors and Participating Project Developers that the Authority will publish their names on its website.

**10092.4(d)(2):** The purpose of this provision is to require Participating Contractors to maintain a contractor's license that is free of active discipline, and to notify the Authority when disciplinary action has been taken.

**10092.4(d)(3):** The purpose of this provision is to require that Participating Contractors and Participating Project Developers hold and maintain general liability insurance of at least \$1 million per occurrence through their enrollment with the Program.

**10092.4(d)(4):** The purpose of this provision is to inform Participating Contractors and Participating Project Developers that the Authority may request updated proof of insurance on an annual basis.

**10092.4(d)(5):** The purpose of this provision is to require Participating Contractors and Participating Project Developers to maintain all documentation related to a Project for at least eighteen months after the completion of work on the Project, and that they must supply the documentation if requested by the Authority as part of a compliance verification.

**10092.4(e)(1):** The purpose of this provision is to establish the process by which and grounds for which the Authority may remove a Participating Contractor or Participating Project Developer from the Program. It also specifies additional actions that may be taken as a result of such termination.

**10092.4(e)(2):** The purpose of this provision is to require that a contractor or project developer that has been removed from the Program must not represent themselves as affiliated with the Program, and must cease use of reference to the Program or associated brand, logos, or promotional materials.

**10092.4(e)(3):** The purpose of this provision is to grant Participating Contractors and Participating Project Developers the right to appeal their removal of from the Program and establish the appeals process. This provision also requires notices of termination and appeal decisions to be provided in writing.

**10092.4(e)(3)(A):** The purpose of this provision is to establish the process, requirements, and timeline by which a terminated contractor or project developer may appeal its removal from the Program to the Executive Director.

**10092.4(e)(3)(B):** The purpose of this provision is to establish the process, requirements, and timeline by which the Executive Director must review, decide, and respond to an appeal received by a contractor or project developer that has been terminated from the Program.

**10092.4(e)(3)(C):** The purpose of this provision is to establish the process, requirements, and timeline by which a terminated contractor or project developer may appeal its removal from the Program by the Executive Director directly to the Authority.

**10092.4(f):** The purpose of this provision is to allow a Participating Contractor or Participating Project Developer to withdraw from the Program by providing written notice to the Authority.

### 3. Necessity.

This section is necessary for the Program to establish minimum criteria for participation in the Program and by which Participating Contractors and Participating Project Developers demonstrate experience and their legal standing in effort to safeguard the public, to align the Program with industry standards, strengthen the Program impact and usability, and for the Authority to partner with experienced contractors. This section is also necessary to standardize the application process for contractors and project developers to attract qualified partners yet remain flexible enough to attract a large applicant pool. This section is also necessary to create a process for removing bad actors from the Program.



**10092.4(a)(1):** This provision is necessary for the Program to establish the requirements to ensure participants are professionally responsible for the installation of measures on a Project and provide associated Project data, and certify work that is performed. Licensed contractors are necessary to ensure installation is conducted by an entity credentialed by the State of California to perform to safeguard the public by ensuring basic industry standards will be met. Further, requiring a licensed contractor is necessary to protect the public by ensuring the California State License Board's customer complaint and resolution process is available to the Eligible Commercial Financing Customer, which is designed to protect the public in matters pertaining to construction and to assist in the resolution of construction-related complaints. This provision is also necessary to differentiate between a Participating Contractor that has been accepted by the Authority for participation in the Program and an Eligible Contractor that has applied but has not yet been accepted.

**10092.4(a)(2):** This provision is necessary for the Program to establish the requirements to ensure a Participating Project Developer is an individual or entity with expertise designing, developing, and/or consulting on projects in energy efficiency systems and equipment. Stakeholders informed the Authority that project developers play essential roles in facilitating and growing Energy Efficiency retrofit transactions, and the inclusion of project developers as participants in the Program is necessary to align with industry standards and strengthen the Program's impact and usability, particularly for larger or more complex Projects. This provision is necessary to permit a Participating Project Developer that holds a valid CSLB license to also perform installations if it applies to, and is accepted to participate in, the Program as a Participating Contractor. This provision is also necessary to differentiate between a Participating Project Developer that has been accepted by the Authority for participation in the Program and an Eligible Project Developer that has applied but has not yet been accepted.

**10092.4(a)(3):** This provision is necessary to ensure there is an enrolled entity certifying that each measure on a Project was installed and that the installation complies with Program regulations. It is necessary to have one or more Participating Contractors complete all Projects that are not completely self-installed to ensure basic industry standards are met with regard to installation, the performance of the Energy Saving Measures, and safety. If a Project is completely self-installed, it is necessary to have a Participating Project Developer certify the Project to ensure that funds financed through the Program were used for the purchase and installation of Energy Saving Measures. This provision is also necessary to align the Program with the energy efficiency industry by allowing a Project to have one or more Participating Contractors each installing Energy Saving Measures and a Participating Project Developer engaged to design the Project and facilitate data exchange between the Authority, Eligible Commercial Financing Customer, Finance Provider Entity, and the Participating Contractors. However, it is necessary that there be no more than one Participating Project Developer on a Project because it would complicate the allocation of Program responsibilities and create confusion as to which party is responsible for submission of data, documents, and certifications.

**10092.4(b)(1)(A):** This provision is necessary because the ESM List is a compilation of the most common Energy Saving Measures and an Eligible Contractor that does not install any measures on that list will be unlikely to provide a service which will contribute to the Program's energy saving goals.

**10092.4(b)(1)(B):** This provision is necessary to ensure that Eligible Contractors are familiar with the Program’s structure, rules, procedures, and requirements before they are enrolled in the Program so that they understand what is expected of them as a Participating Contractor. This is necessary to establish basic standards for Program participation and increase the likelihood of successful interaction with the Program after enrollment.

**10092.4(b)(1)(C):** This provision is necessary to ensure that the Eligible Contractor submits a complete application which includes all required elements so that the Authority can properly evaluate the application, verify qualification, and make an informed determination whether to accept it for participation in the Program.

**10092.4(b)(1)(D):** This provision is necessary to avoid a conflict of interest between the Participating Contractor and the Eligible Commercial Financing Customer, ensure reliability of Project data, documentation, and certifications, and protect ratepayer funds from potential misrepresentation, fraud, or abuse.

**10092.4(b)(1)(E):** This provision is necessary to ensure that Eligible Contractors are in good legal standing, and to prevent the enrollment of an Eligible Contractor whose past work has caused damages leading to civil judgment which may indicate that it would pose a future risk to Eligible Commercial Financing Customers or their Projects.

**10092.4(b)(1)(F):** This provision is necessary to ensure that an Eligible Contractor’s license is in good standing with the CSLB, free of any disciplinary action, which could indicate that it would pose a future risk to Eligible Commercial Financing Customers or their Projects.

**10092.4(b)(1)(G):** This provision is necessary to ensure that the Eligible Contractor is credentialed by the State of California and licensed to perform specific types of work being conducted while enrolled in the Program.

**10092.4(b)(1)(H):** This provision is necessary to ensure that an Eligible Contractor is insured against liability for loss, injury, or property damage resulting from its work so that it can continue to uphold its responsibilities and obligations under the Program. This provision is necessary to establish an appropriate level of consumer protection. The threshold of at least \$1 million was determined based on input from stakeholders, trade allies, Program requirements, and industry standards, and is consistent with insurance requirements under state contracting law and as required by the Department of General Services.

**10092.4(b)(2)(A):** This provision is necessary to ensure that Eligible Project Developers are familiar with the Program’s structure, rules, procedures, and requirements before they are enrolled in the Program so that they understand what is expected of them as a Participating Project Developer. This is necessary to establish basic standards for Program participation and increase the likelihood of successful interaction with the Program after enrollment.

**10092.4(b)(2)(B):** This provision is necessary to ensure that the Eligible Project Developer submits a complete application which includes all required elements so that the Authority can

properly evaluate the application, verify qualification, and make an informed determination whether to accept it for participation in the Program.

**10092.4(b)(2)(C):** This provision is necessary to ensure that Eligible Project Developers are in good legal standing, and to prevent the enrollment of an Eligible Project Developer whose past work has caused damages leading to civil judgment which may indicate that it would pose a future risk to Eligible Commercial Financing Customers or their Projects.

**10092.4(b)(2)(D):** This provision is necessary to ensure that an Eligible Project Developer is insured against liability for loss, injury, or property damage resulting from its work so that it can continue to uphold its responsibilities and obligations under the Program. This provision is necessary to establish an appropriate level of consumer protection. The threshold of at least \$1 million was determined based on input from stakeholders, trade allies, Program requirements, and industry standards, and is consistent with insurance requirements under state contracting law and as required by the Department of General Services.

**10092.4(b)(2)(E):** This provision is necessary to ensure that Participating Project Developers have the necessary experience and expertise to provide assistance to Eligible Commercial Financing Customers, while offering flexibility in how they demonstrate that experience. Completion of at least ten projects as a project developer is necessary to demonstrate a minimum threshold of experience. The Authority chose ten projects as the minimum threshold based on industry input and feedback. Alternatively, contracting as an IOU, REN, or CCA Energy Efficiency or Demand Response implementer is necessary to provide the Eligible Project Developer an option to demonstrate that it has experience within the Energy Efficiency or Demand Response market through its implementation of an IOU, REN, or CCA program, and ensure broad participation.

**10092.4(c)(1):** This provision is necessary to ensure the Eligible Contractor's application is complete and includes all the necessary information for the Authority to confirm compliance with the requirements and qualifications to participate in the Program, and that all acknowledgements and certifications are binding.

**10092.4(c)(2)(A-D):** These provisions are necessary to help ensure the Eligible Project Developer's application is complete and includes the necessary information, acknowledgements, and certifications for the Authority to confirm compliance with the requirements and qualifications and experience to participate in the Program.

**10092.4(c)(2)(E):** This provision is necessary to ensure that all information, acknowledgements, and certifications provided in the Eligible Project Developer's application are authorized and binding.

**10092.4(c)(3)(A-B):** These provisions are necessary for the Authority to have the appropriate information needed to contact the Eligible Contractor and its Program representative.

**10092.4(c)(3)(C):** This provision is necessary to ensure the Authority has the information needed to properly market the Eligible Contractor after it is enrolled in the Program and allow Eligible Commercial Financing Customers to find Participating Contractors for their Projects.

**10092.4(c)(3)(D):** This provision is necessary to ensure that an Eligible Contractor has a relevant CSLB license for work they perform once they are enrolled in the Program as a Participating Contractor. This provision is also necessary to provide the Authority with the information needed to properly market the Enrolled Contractor and allow Eligible Commercial Financing Customers to find Participating Contractors for their Projects.

**10092.4(c)(3)(E-F):** These provisions are necessary to verify that people providing data and those certifying data on behalf of the Participating Contractor are authorized to do so.

**10092.4(c)(3)(G-I):** These provisions are necessary for the Authority to properly market the Eligible Contractor after it is enrolled in the Program and allow Eligible Commercial Financing Customers to find Participating Contractors in their area that offer services needed for their Projects and can effectively communicate with them.

**10092.4(c)(3)(J):** This provision is necessary to inform the Authority which IOUs, RENs, or CCAs the Eligible Contractor has worked with, and to gauge its familiarity with the trade professional programs and existing rebate and incentive programs offered by those IOUs, RENs, or CCAs. Taking advantage of these available resources can potentially reduce the net cost of a Project to the Eligible Commercial Financing Customer, and therefore the Total Financed Amount and associated Loss Reserve Contribution required, extending the benefit of ratepayer dollars.

**10092.4(c)(3)(K):** This provision is necessary to ensure the Eligible Contractor has completed the required training made available by the Authority, and establishes the earliest date at which the Eligible Contractor may be approved for participation in the Program.

**10092.4(c)(4)(A-B):** These provisions are necessary for the Authority to have the appropriate information needed to contact the Eligible Project Developer and its Program contact person.

**10092.4(c)(4)(C):** This provision is necessary to ensure the Authority has the information needed to properly market the Eligible Project Developer after it is enrolled in the Program and allow Eligible Commercial Financing Customers to find Participating Project Developers for their Projects.

**10092.4(c)(4)(D-E):** These provisions are necessary to establish appropriate administrative controls to verify that people providing data and those certifying data on behalf of the Participating Project Developer are authorized to do so.

**10092.4(c)(4)(F-H):** These provisions are necessary for the Authority to properly market the Eligible Project Developer after it is enrolled in the Program and allow Eligible Commercial Financing Customers to find Participating Project Developers in their area that offer services needed for their Projects and can effectively communicate with them.

**10092.4(c)(4)(I):** This provision is necessary to inform the Authority which IOUS, RENS, or CCAs the Eligible Project Developer has worked with, and to gauge its familiarity with existing rebate and incentive programs offered by those IOUS, RENS, or CCAs. Taking advantage of these available resources can potentially reduce the net cost of a Project to the Eligible Commercial Financing Customer, and therefore the Total Financed Amount and associated Loss Reserve Contribution required, extending the benefit of ratepayer dollars.

**10092.4(c)(4)(J):** This provision is necessary to ensure the Eligible Project Developer has completed the required training made available by the Authority, and establishes the earliest date at which the Eligible Project Developer may be approved for participation in the Program.

**10092.4(c)(5)(A):** This provision is necessary for the Authority to help prevent Participating Contractors from misleading customers, stakeholders, Program participants, or the public, speaking or acting on behalf of the Authority or any IOU, or being mistaken as representing either of them in any capacity. This provision is also necessary for the Authority to comply with the terms of its agreement with the IOUs under the Decision.

**10092.4(c)(5)(B):** This provision is necessary to ensure that the Authority, the State of California, and ratepayer and taxpayer funds are protected against liability resulting from the Eligible Contractor's participation in the Program.

**10092.4(c)(5)(C):** This provision is necessary to protect the IOUs from any liabilities arising from the Program's requirements, Projects, or operations, or the Eligible Contractor's work, representations, or participation in the Program, because the IOUs are not directly involved in the implementation or administration of the Program and are not affiliated with the Eligible Contractor or the Authority beyond what is directed in the Decision. This provision is also necessary for the Authority to comply with its contract with the IOUs under the Decision.

**10092.4(c)(6)(A):** This provision is necessary for the Authority to clarify that Participating Project Developers are private entities and do not speak or act on behalf of the Authority or any IOU. This provision is also necessary to strengthen consumer protection under the Program. Experience from previous IOU financing programs demonstrated the importance of this provision.

**10092.4(c)(6)(B):** This provision is necessary to ensure that the Authority, the State of California, and ratepayer funds will be protected against liability for loss, injury, or property damage resulting from work developed by the Eligible Project Developer or other participation by it in the Program.

**10092.4(c)(6)(C):** This provision is necessary to protect the IOUs from any liabilities arising from the Program's requirements, Projects, or operations, or the Eligible Project Developer's services, representations, or participation in the Program, because the IOUs are not directly involved in the implementation or administration of the Program and are not affiliated with the Authority beyond what is directed in the Decision. This provision is also necessary for the Authority to comply with the terms of its agreement with the IOUs under the Decision.

**10092.4(c)(7)(A):** This provision is necessary to ensure that the Eligible Commercial Financing Customer is provided all information that is required by applicable law but not expressly required elsewhere in the regulations.

**10092.4(c)(7)(B):** This provision is necessary to ensure that the Participating Contractor and Participating Project Developer understand and affirmatively certify they will maintain uninterrupted regulatory oversight and do not commit any violations that impair their ability to fulfill their obligations under the Program.

**10092.4(c)(7)(C):** This provision is necessary to ensure that the Participating Contractor and Participating Project Developer understand and affirmatively certify they will comply with Program regulations, including but not limited to, all Projects submitted for enrollment being eligible under the Program.

**10092.4(c)(7)(D):** This requirement is necessary to ensure that the Participating Contractor and Participating Project Developer understand and affirmatively certify they will operate under industry standards and best practices, and will be consistent with insurance requirements under state contracting law as required by the Department of General Services. The threshold of at least \$1 million was chosen based on input from stakeholders, trade allies, Program requirements, and industry standards. This provision is also necessary to ensure that the Participating Contractor and Participating Project Developer will be protected throughout their enrollment in the Program against liability for loss, injury, or property damage resulting from their work on Projects, and preserving liquidity so that they can continue to uphold their Program responsibilities and obligations. General liability insurance is further necessary to make the Eligible Commercial Financing Customers whole in the event it incurs a loss, injury, or property damage from a Project.

**10092.4(c)(7)(E):** This provision is necessary for the Authority to perform quality assurance verification checks to confirm Projects are installed and submitted accurately, which ensures compliance with Program rules, prevents fraud, and safeguards ratepayer funds from improper use and excess exposure.

**10092.4(c)(7)(F):** This provision is necessary to ensure the Authority is not liable to the Participating Contractor or Participating Project Developer for losses or claims arising from factors which are outside of its control.

**10092.4(c)(7)(G):** This provision is necessary as a consumer protection measure to better ensure Participating Contractors and Participating Project Developers do not use participation in the Program to defraud, operate in bad faith, or misrepresent the costs and/or benefits of participation in the Program.

**10092.4(c)(7)(H):** This provision is necessary to ensure that Eligible Contractors and Eligible Project Developers are in good legal standing, and to prevent the enrollment of an Eligible Contractor or Eligible Project Developer whose past work has caused a judgment and indicates it may pose a risk to Eligible Commercial Financing Customers or their Projects.

**10092.4(c)(7)(I):** This provision is necessary to ensure that the Authority is not responsible for Eligible Contractor or Eligible Project Developer representations under the Program. This is necessary to protect the Authority from third-party actions.

**10092.4(c)(7)(J):** This provision is necessary to provide a certification of truth and accuracy binding the Eligible Contractor and Eligible Project Developer to the certifications made in their applications for enrollment in the Program.

**10092.4(c)(8):** This provision is necessary to ensure that forthcoming Projects submitted by a Participating Project Developer are eligible for the Program and comply with all Program regulations. This provision is necessary to ensure funds financed under the Program are being used as intended. This provision also helps to prevent fraud and misrepresentation associated with self-installed measures.

**10092.4(c)(9):** This provision is necessary to ensure that the Authority reviews applications and provides feedback, instructions, and approval decisions to the Eligible Contractor and Eligible Project Developer in a timely and effective manner. The response time of ten business days was chosen to align with the Authority's experience administering similar programs, and prevents undue delay while allowing sufficient time to thoroughly review applications. This provision is also necessary to prevent complications from disputes or appeals by making the Authority's acceptance decision final.

**10092.4(d)(1):** This provision is necessary for the Authority to properly market Participating Contractors and Participating Project Developers in the Program and allow Eligible Commercial Financing Customers to find qualified Participating Contractors and Participating Project Developers for their Projects, and effectively implement the Program.

**10092.4(d)(2):** This provision is necessary to ensure that a Participating Contractor maintains a license in good standing with the CSLB throughout its participation in the Program, and to require the Participating Contractor to inform the Authority of any disciplinary action which affects the Participating Contractor's continued participation.

**10092.4(d)(3):** This provision is necessary to ensure that the Participating Contractor and Participating Project Developer maintain the insurance requirements through their participation in the Program. The insurance requirements are necessary to operate under industry standards and best practices, and are consistent with insurance requirements under state contracting law, as required by the Department of General Services. The threshold of at least \$1 million was chosen based on input from stakeholders, trade allies, Program requirements, and industry standards.

**10092.4(d)(4):** This provision is necessary to provide the Authority with the ability to verify and enforce the ongoing requirements for general liability insurance detailed in Section 10092.4(c)(7)(D).

**10092.4(d)(5):** This provision is necessary to provide the Authority with the ability to perform an audit of all documentation produced or relied upon in completing the Project including, but not

limited to, invoices, scope(s) of work, and records conveying location of installed measures within each Eligible Property. The 18-month period was enacted to that the requirement extends throughout the period of time established in the Program's quality assurance procedures.

**10092.4(e)(1):** This provision is necessary to provide the Authority with the ability to remove a Participating Contractor or Participating Project Developer when it has acted in a way that is noncompliant with Program requirements. Non-compliant behavior impacts consumer protection measures, places an undo administrative and financial burden on the Authority, and exposes ratepayer funds to unnecessary risk. This provision is also necessary to provide the Authority with the ability to remove a Participating Project Developer if it qualified for enrollment as a result of holding a contract as an IOU, REN, or CCA implementer and that contract is terminated due to misconduct. This is necessary as a means to remove a Project Developer that has been identified as a bad actor by an IOU, REN, or CCA. This provision is further necessary to give the Authority permission to share details about contractor and project developer termination with other government agencies and IOUs, RENs, or CCAs because the termination may violate the terms of other programs or indicate elevated risk to the public.

**10092.4(e)(2):** This provision is necessary to ensure that contractors and project developers do not continue to represent themselves as part of the Program after they have been removed from the Program. This is necessary to protect Eligible Financing Customers from bad actors that the Authority has removed, as well as to protect the integrity of the Program.

**10092.4(e)(3):** This provision is necessary to provide a process under which Participating Contractors and Participating Project Developers that have been removed from the Program to be notified of the decision and establish an opportunity to appeal the decision. This provision is also necessary to establish reasonable timelines for each stage of the appeal process, including sufficient time to prepare necessary documents and supporting evidence, time to prepare responses, without creating an unduly long period of time for the process.

**10092.4(e)(3)(A):** This provision is necessary to allow Participating Contractors and Participating Project Developers that have been removed from the Program by the Executive Director an opportunity to explain the circumstances that led to its removal. The fifteen-business day requirement is necessary so that the Authority can effectively administer the Program while providing time for the removed project developer or contractor to provide a defense of the circumstances.

**10092.4(e)(3)(B):** The deadline of ten business days for the Executive Director response was chosen to provide a reasonable amount of time to review and respond to an issue while balancing other obligations. It is the Authority's experience that a two-week period is sufficient.

**10092.4(e)(3)(C):** If the Executive Director has removed a Participating Contractor or Participating Project Developer from the Program, this provision is necessary to provide the contractor or project developer an opportunity to appeal that decision to the Authority to ensure that they have an opportunity to explain the circumstances to the Authority, which is removed and independent of the Executive Director. This provision is necessary to ensure the appeal process is in accord with best practices. The timeline for consideration at the next regular board



meeting at least twenty-business days after the Executive Director's response to the appeal ensures that the Authority jointly reviews the merits of the project developer or contractor's rebuttal before making a determination, while allowing sufficient time for the consideration to be added to the Board agenda in regular order. Furthermore, this provision is necessary to prevent complications from extended disputes by making the Authority's decision final.

**10092.4(f):** This provision is necessary to make participation in the Program voluntary and thus more attractive to Eligible Contractors and Eligible Project Developers that may be apprehensive about joining a program from which they cannot withdraw. Having a requirement for written notice ensures that the withdrawal is documented and transparent.

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

The Authority relied on experts from both the public and private sectors, and rules and regulations for similar programs in California and other states to develop the definitions used in this section. In addition, the Authority relied on direct discussions with current and former staff from other states or programs with similar programs. The eligibility criteria, as defined in this regulation, were established in consultation with the California Public Utilities Commission, investor owned utilities staff, and other stakeholders. The Authority relied upon the Decision and the following related CPUC documents (subsequently referred to collectively throughout this document as the "Proceeding") in proposing the adoption of this regulation:

- Decision 13-09-044, Decision Implementing 2013-14 Energy Efficiency Financing Pilot Programs (the "Decision"), issued September 20, 2013
- 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, issued September 11, 2014
- Administrative Law Judge's Ruling regarding Changes to Decision 13-09-044, issued July 23, 2015
- Assigned Commissioner's Ruling Extending Pilot Programs, issued August 25, 2014
- Decision 15-06-008 Modifying Decision 13-09-044, Issued June 11, 2015
- Administrative Law Judge's Ruling Requesting Comments on Harcourt Brown & Carey Revised Recommendation Regarding Energy Efficiency Equipment Lease financing, issued July 23, 2015
- Decision 15-12-002, Modifying Decision 13-09-044, Issued December 3, 2015
- Decision 17-03-026, Decision Addressing Energy Efficiency Financing Pilot Programs Originally Ordered in Decision 13-09-044, Issued March 23, 2017
- Resolution E-4900, Adopts metrics as tools to contribute to the determination of the long-term viability of energy efficiency finance pilots, December 14, 2017

The Authority relied upon the following documents and studies (subsequently referred to collectively throughout this document as the "Studies") in proposing the adoption of this regulation:

- Energy Efficiency Financing Implementation Primer (DOE SEE Action, January 2014)
- Financing Energy Improvements on Utility Bills (DOE SEE Action, May 2014)
- Energy Efficiency Finance Programs-Use Case Analysis (DOE SEE Action, July 2014)

- California Energy Efficiency Finance Data Working Group Final Report (California Energy Efficiency Finance Data Working Group, December 2013)
  - Getting the Biggest Bang for the Buck - Exploring the Rationales and Design Options for Energy Efficiency Financing Programs (LBNL, December 2013)
  - Using Financing to Scale Up Energy Efficiency (DOE SEE Action, July 2013)
  - Recommendations for Energy Efficiency Finance Pilot Programs (Harcourt Brown & Carey, October 2012)
  - Interactions Between Energy Efficiency Programs Funded Under the Recovery Act and Utility funded Energy Efficiency Programs (LBNL, March 2011)
  - PG&E Energy Upgrade California 2013-2014 Home Upgrade Participant Handbook, version 4.2, July 2, 2014
  - Opinion Dynamics and Dunsky Energy Consulting, Final CPUC REEL Pilot Impact Evaluation Considerations, December 29, 2017
  - Transforming Small Business Participating in Energy Efficiency: Driving Energy Savings with a Progressive Approach to Small Business Direct Install Program, (Nexant, 2013)
  - Big Opportunities for Small Business: Successful Practices of Utility Small Commercial Energy Efficiency Program (American Council For an Energy-Efficiency Economy, November 2016)
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, or Participating Contractors. During the emergency regulation rulemaking process the Authority conducted extensive stakeholder engagement and research in the pre-rulemaking process, undertook extensive internal deliberation, and learned lessons from early Program implementation; significant alternatives considered are discussed below:

**10092.4(a):** As stated in Section 10092.1(uu), the Authority's initial program design did not include the Participating Project Developer role. This role was added because it will assist with deal-flow, facilitate the exchange of Project data between the Authority and contractors not inclined to manage Program paperwork, align the Program with industry standards, and serve as a third party to design and organize Projects.

**10092.4(b)(1)(H):** When these regulations were initially adopted as emergency regulations, the general liability insurance requirements were set at limits of no less than \$2 million per occurrence. It was suggested by industry stakeholders that the requirement was set too high and was impairing Program participation by certain contractors and that \$1 million in coverage per occurrence was the industry standard. Based on this feedback, the Authority changed this requirement to require no less than \$1 million in general liability insurance.

**10092.4(b)(2)(D):** When these regulations were initially adopted as emergency regulations, the general liability insurance requirements were set at limits of no less than \$2 million per

occurrence. It was suggested by industry stakeholders that the requirement was set too high and was impairing Program participation by certain project developers and that \$1 million in coverage per occurrence was the industry standard. Based on this feedback, the Authority changed this requirement to require no less than \$1 million in general liability insurance.

**10092.4(b)(2)(E):** The Authority originally contemplated setting the requirement that the Eligible Project Developer demonstrate it has completed no fewer than 25 projects in the project developer role but this was rejected because input from industry suggested that this standard was too high and would impair Program participation by a large segment of the industry. Further, the Authority considered not allowing the IOU, REN, or CCA Energy Efficiency or Demand Response contract exemption but that option was rejected in order to improve Program participation and better align with other programs.

**10092.4(c)(2):** As stated in Section 10092.1(s), it was suggested that an Eligible Project Developer hold a credential from the Investor Confidence Project (ICP) as a gauge of its ability to design and certify Projects and to set a minimum qualification for ensuring measures installed on a Project reduce energy consumption. The Authority rejected this suggestion because the certification was too narrow and onerous for broad Program participation. Further, the measure eligibility methods, in particular the Professionally Certified Measure Method, provide adequate assurance that measures that do not qualify via the ESM List Method will reduce energy consumption.

**10092.4(c)(2)(D):** As stated in 10092.4(b)(2)(E) above, the Authority originally contemplated setting the requirement that the Eligible Project Developer demonstrate it has completed no fewer than 25 projects in the project developer role but this was rejected because input from industry suggested that this standard was too high and would impair Program participation by a large segment of the industry. Further, the Authority considered not allowing the IOU, REN, or CCA Energy Efficiency or Demand Response contract exemption but that option was rejected in order to improve Program participation.

**10092.4(c)(3)(E)-(F):** The Authority considered the option of requiring that the individual authorized to provide data to the Program be the same as the individual authorized to submit and certify data to the Program. This option was rejected because the Authority understands that contractor companies are likely to have employees that hold varying degree of responsibility and authority. The Authority chose to provide contractor companies with flexibility by allowing certain employees to have the authority to provide data and different employees to have the authority to submit and certify data. The Authority believes the option it chose aligns with common industry practices.

**10092.4(c)(3)(J):** The Authority considered excluding the requirement for the Eligible Contractor to disclose the IOU, REN, or CCA trade professional programs in which it is currently participating but rejected that option because the information informs the Authority of the level of experience the contractor has with utility programs, including rebate and incentive programs, and to better coordinate with its partners..

**10092.4(c)(4)(D)-(E):** The Authority considered the option of requiring that the individual authorized to provide data to the Program be the same as the individual authorized to submit and certify data to the Program. This option was rejected because the Authority understands that project developer companies are likely to have employees that hold a varying degree of authority. The Authority chose to provide project developer companies with flexibility by allowing certain employees to have the authority to provide data and different employees to have the authority to submit and certify data. The Authority believes the option it chose aligns with common industry practices

**10092.4(c)(4)(I):** The Authority considered excluding the requirement for the Eligible Project Developer to disclose the IOU, REN, or CCA Energy Efficiency programs in which it is enrolled but rejected that option because the information informs the Authority of the level of experience the project developer has with utility programs, including rebate and incentive programs.

**10092.4(c)(7)(D):** When these regulations were initially adopted as emergency regulations, the general liability insurance requirements were set at limits of no less than \$2 million per occurrence. It was suggested by industry stakeholders that the requirement was set too high and was impairing Program participation by certain contractors and project developers and that \$1 million in coverage per occurrence was the industry standard. Based on this feedback, the Authority changed this requirement to require no less than \$1 million in general liability insurance.

**10092.4(d)(2):** The Authority considered both more and fewer days for Participating Contractors to inform the Authority that action has been taken against its license, but these other options were rejected upon the determination that 10 business days is a reasonable balance between the Authority's need to know if a Participating Contractor has had disciplinary action taken against its contracting license and not imposing too great a burden on Program participants.

**10092.4(d)(3):** When these regulations were initially adopted as emergency regulations, the general liability insurance requirements were set at limits of no less than \$2 million per occurrence. It was suggested by industry stakeholders that the requirement was set too high and was impairing Program participation by certain contractors and project developers and that \$1 million in coverage per occurrence was the industry standard. Based on this feedback, the Authority changed this requirement to require no less than \$1 million in general liability insurance.

**10092.4(d)(4):** The Authority considered both more and less time for the Authority's ability to request updated insurance information, but these other options were rejected upon the determination that annually is a reasonable balance between the Authority's need to know that a Program participant is maintaining a Program requirement and not imposing too great a burden on Program participants.

**10092.4(d)(5):** The Authority considered both more and fewer months for Participating Contractors and Participating Project Developers to maintain all Program related documentation, but these other options were rejected upon the determination that 18 months is a reasonable balance between the Authority's need to access documentation and data for Quality Assurance

and Quality Control purposes and aligning this requirement with other Program requirements and not imposing too great a burden on Program participants.

**10092.4(e)(3)(A):** The Authority considered both more and fewer days for Participating Contractors and Participating Project Developers to submit and for the Authority to receive an explanation of their misrepresentation or failure to comply with Program requirements, but these other options were rejected upon the determination that 15 business days is a reasonable balance between providing adequate time for a Participating Contractor or Participating Project Developer to prepare an explanation of their misrepresentation or failure to comply and submit it to the Authority and the administrative burden to the Authority associated with the withdrawal process and the risk to customers associated with keeping bad actors enrolled in the Program.

**10092.4(e)(3)(B):** The Authority considered both more and fewer months for the Executive Director to respond to any information provided by a Participating Contractor or Participating Project Developer explaining their misrepresentation or failure to comply, but these other options were rejected upon the determination that 10 business days is a reasonable balance between providing adequate time for the Executive Director to review and consider the explanation and to provide a decision and the burden on the Participating Contractor or Participating Project Developer associated with the lack of certainty relating to their enrollment status.

**10092.4(e)(3)(C):** The Authority considered both more and less time for Participating Contractors and Participating Project Developers to appeal the Executive Director's decision, but these other options were rejected upon the determination that the first board meeting at least 20 business days after the appeal is received is a reasonable balance between providing the Authority adequate time to prepare and properly notice the board meeting agenda and the burden on the Participating Contractor or Participating Project Developer associated with the lack of certainty relating to their enrollment status.

6. Alternatives to the Proposed Regulation Action that Would Lesson 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 Efficiency improvements for their businesses.

## SECTION 10092.5. ELIGIBLE FINANCIAL PRODUCTS

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

Under the CPUC Decision establishing the Hub, the Authority retains the authority to establish Program requirements. The basic minimum standards for financing provisions need to be established to ensure minimum standards for financing terms. As the Program seeks to achieve a balance between expanding the market by increasing private capital and the protection of ratepayer dollars, this section sets general guidelines while not being overly prescriptive.

2. Specific Purpose of the Regulation.

The purpose of this section is to describe the requirements and establish the minimum standards for Eligible Financing Agreements to be eligible for enrollment in the Program. This section requires that Finance Provider Entities disclose the annual percentage rate or total cost of the Eligible Financing Agreement to the Eligible Commercial Financing Customer. It also describes the requirements for the Eligible Financing Agreements, including maximum financed amount, fees, security interests, and whether and how refinancing is allowable. Finally, this section requires that each Enrolled Financing Agreement is consistent with the terms of the Finance Provider Entity's products that have been approved by the Authority for participation in the Program.

**10092.5(a):** The purpose of this provision is to require the disclosure of certain terms of Eligible Financial Products to the Eligible Commercial Financing Customer. The Finance Provider Entity must provide the Eligible Commercial Financing Customer the annual percentage rate or the total cost of the Project, inclusive of fees. This provision also describes the methodology by which the total cost of the Project is to be calculated.

**10092.5(b):** The purpose of this provision is to outline the specific provisions applicable to all Eligible Financing Agreements, regardless of the type of financing agreement offered, and are in addition to the specific requirements for an Eligible Lease or Eligible Equipment Financing Agreement, Eligible Loan, Eligible Service Agreement, or Eligible Savings-Based Payment Agreement that are included in the definition of each of those products. The provisions include interest rate requirements, maximum financed amount, security interest requirements, refinancing restrictions, a prohibition on revolving lines of credit, fees, enrollment in similar programs, and a requirement that the Eligible Financing Agreement must be consistent with the product terms which have been approved by the Authority for inclusion in the Program.

3. Necessity.

This section is necessary to provide Eligible Commercial Financing Customers with certain consumer protections by requiring Finance Provider Entities to disclose either the annual percentage rate associated with the Eligible Financing Agreement or the total financed amount. Disclosing the annual percentage rate or the total financed amount provides the Eligible Commercial Financing Customer with information that will assist them in making an informed

decision relating to whether or not to finance Energy Efficiency upgrades. A description of other requirements for eligible products is necessary for finance companies to understand what types of terms and provisions they may offer under the Program and provides a prospective finance company with information to assist them in deciding whether to apply to the Program.

**10092.5(a):** This provision is necessary to inform Eligible Commercial Financing Customers of the expected cost associated with the financing agreement that the customer will enter into with the Finance Provider Entity. These options are necessary to accommodate the different types of financing products permitted in the Program; some products have predictable rates and payments and others have payments based on energy usage, which varies. This provision is necessary to establish a best practice for consumer protection for all financing types under the Program. Informing the Eligible Commercial Financing Customer of the annual percentage rate or Total Financed Amount is necessary to provide transparency to the customer relating to the total amount that it will finance and the total amount that will need to be repaid over time. It is also necessary to provide the customer with enough information about the financing to make an informed decision about whether or not to finance a project. Further, it is necessary to provide the methodology for calculating the total project cost so that there is parity between finance companies and financing products when calculating this amount. It was necessary to include a provision relating specifically to Savings-Based Payment Agreements satisfying the methodology for total project cost by providing a good faith estimate because the monthly payments in those agreements can fluctuate on a month-to-month basis and calculating an exact figure can be difficult to accomplish. It was also necessary to include that the good faith estimate be based on industry-accepted methods and assumptions in order to ensure that the Finance Provider Entity is basing its estimate on sound, and industry accepted, methodology.

**10092.5(b)(1):** This provision is necessary to provide flexibility to the Finance Provider Entity and allow them to determine the type of rate they would like to set. It is necessary to provide flexibility to various financing structures to meet the Decision's goal of expanding the availability of financing for Energy Efficiency.

**10092.5(b)(2):** This provision is necessary to set a limit on the total amount that can be financed through the Program to conserve ratepayer funds, so they are available to assist a larger number of projects rather than just a few big projects. As the Total Financed Amount increases, so does the potential risk to ratepayer funds because as the financed amount increases a potential claim payment, in the event of default, also increases. A Total Financed Amount of \$5 million is necessary to standardize the Total Financed Amount with other pilots administered by the Authority and because it was determined to be sufficiently large to accommodate whole-building commercial retrofits.

**10092.5(b)(3):** This provision is necessary to prevent refinancing of existing finance agreements, to ensure the Program is being effectively targeted to new projects. If an existing financing agreement was agreed to, and funded, without credit enhancements, then the Program would not be aligned with its goals of attracting new capital to the Energy Efficiency market. However, it was necessary to include the ability to refinance under certain conditions to address industry transaction needs. It was necessary to permit refinancing if the original and refinancing agreements are for the same Project and the Eligible Financing Agreement is submitted for

enrollment in the Program within 90 days of the Scope of Work Completion date in order to allow for “bridge loans” or other “advance payment” financings that provide funding to the contractor so that they can order or purchase equipment for the Project. The time limit of 90 days on refinancing is necessary because it provides time for the Finance Provider Entity to close the original financing agreement and submit the new agreement for enrollment in the Program. The time limit of 90 days also aligns the refinancing provision with the time limit established for submitting a non-refinanced finance agreement. Further, it was necessary to require the original and refinanced agreement to be for the same project to ensure that Program funds are used at an Eligible Property and that all aspects of the Project comply with the regulations in this Article.

**10092.5(b)(4):** This provision is necessary to prohibit revolving lines of credit so the credit enhancement can be calculated based on a defined term and monthly payment. This is necessary for the Authority because revolving lines of credit pose an unquantifiable risk to ratepayer funds.

**10092.5(b)(5):** This provision is necessary to ensure Finance Provider Entities are not charging fees higher than those standard in the industry as they are benefiting from ratepayer funded a credit enhancement, mitigating their risk, and the Eligible Commercial Financing Customer should benefit from that reduced risk rather than being charged rates higher than industry standards.

**10092.5(b)(6):** This provision is necessary for Finance Provider Entities to take a security interest in agreements with Total Financed Amounts over \$50,000 to ensure that Finance Provider Entities have recourse, or a means of collecting, on these larger Project amounts in the event of default. Having recourse is necessary to protect ratepayer funds that are otherwise exposed to claims that do not have a security interest because any recovered amount is netted from a claim amount. The \$50,000 figure aligns with the industry standard of taking a security interest in financings at or above this amount.

**10092.5(b)(7):** This provision is necessary to balance requiring the Finance Provider Entity to take a security interest and not encumbering the real property in which measures are installed. Excluding real property from allowed security interests is necessary because encumbering the real property could impede Program participation by customers worried about the effect of that encumbrance. UCC-1 fixture filings are a commonly used security interest in the financing industry, particularly when financing solar photovoltaic electric generation systems. While UCC-1 fixture filings are linked to the property’s title, they relate specifically to the measure installed and not the real property itself.

**10092.5(b)(8):** This provision is necessary to protect ratepayer funds from misuse by preventing Enrolled Financing Agreements from benefiting from multiple ratepayer or taxpayer funded Programs. This provision also protects the validity of the data obtained by the pilot which will be used to evaluate the effectiveness of this program model by ensuring that the credit enhancement alone promoted energy efficiency uptake.

**10092.5(b)(9):** This provision is necessary to ensure that the Eligible Financing Agreements offered to Eligible Financing Customers are consistent with the financing products proposed by the Finance Provider Entity in their application process and approved by the Authority for



inclusion in the Program. Ensuring consistency between proposed and actual Financing Agreements is necessary to make sure that the Eligible Financing Customer is receiving the benefits resulting from the credit enhancement that the Finance Provider Entity and the Authority negotiated and agreed upon, and overall compliance with the Program.

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

The Authority relied on experts from both the public and private sectors, and rules and regulations for similar programs in California and other states to develop the definitions used in this section. In addition, the Authority relied on direct discussions with current and former staff from other states or programs with similar programs. The eligibility criteria, as defined in this regulation, were established in consultation with the California Public Utilities Commission, investor owned utilities staff, and other stakeholders. The Authority relied upon the Decision and the following related CPUC documents (subsequently referred to collectively throughout this document as the “Proceeding”) in proposing the adoption of this regulation:

- Decision 13-09-044, Decision Implementing 2013-14 Energy Efficiency Financing Pilot Programs (the “Decision”), issued September 20, 2013
- 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, issued September 11, 2014
- Administrative Law Judge’s Ruling regarding Changes to Decision 13-09-044, issued July 23, 2015
- Assigned Commissioner’s Ruling Extending Pilot Programs, issued August 25, 2014
- Decision 15-06-008 Modifying Decision 13-09-044, Issued June 11, 2015
- Administrative Law Judge’s Ruling Requesting Comments on Harcourt Brown & Carey Revised Recommendation Regarding Energy Efficiency Equipment Lease financing, issued July 23, 2015
- Decision 15-12-002, Modifying Decision 13-09-044, Issued December 3, 2015
- Decision 17-03-026, Decision Addressing Energy Efficiency Financing Pilot Programs Originally Ordered in Decision 13-09-044, Issued March 23, 2017
- Resolution E-4900, Adopts metrics as tools to contribute to the determination of the long-term viability of energy efficiency finance pilots, December 14, 2017

The Authority relied upon the following documents and studies (subsequently referred to collectively throughout this document as the “Studies”) in proposing the adoption of this regulation:

- Energy Efficiency Financing Implementation Primer (DOE SEE Action, January 2014)
- Financing Energy Improvements on Utility Bills (DOE SEE Action, May 2014)
- Energy Efficiency Finance Programs-Use Case Analysis (DOE SEE Action, July 2014)
- California Energy Efficiency Finance Data Working Group Final Report (California Energy Efficiency Finance Data Working Group, December 2013)
- Getting the Biggest Bang for the Buck - Exploring the Rationales and Design Options for Energy Efficiency Financing Programs (LBNL, December 2013)
- Using Financing to Scale Up Energy Efficiency (DOE SEE Action, July 2013)

- Recommendations for Energy Efficiency Finance Pilot Programs (Harcourt Brown & Carey, October 2012)
- Interactions Between Energy Efficiency Programs Funded Under the Recovery Act and Utility funded Energy Efficiency Programs (LBNL, March 2011)
- PG&E Energy Upgrade California 2013-2014 Home Upgrade Participant Handbook, version 4.2, July 2, 2014
- Opinion Dynamics and Dunsky Energy Consulting, Final CPUC REEL Pilot Impact Evaluation Considerations, December 29, 2017
- Transforming Small Business Participating in Energy Efficiency: Driving Energy Savings with a Progressive Approach to Small Business Direct Install Program, (Nexant, 2013)
- Big Opportunities for Small Business: Successful Practices of Utility Small Commercial Energy Efficiency Program (American Council For an Energy-Efficiency Economy, November 2016)

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, or Participating Contractors. During the emergency regulation rulemaking process the Authority conducted extensive stakeholder engagement and research in the pre-rulemaking process, undertook extensive internal deliberation, and learned lessons from early Program implementation; significant alternatives considered are discussed below:

**10092.5(b)(2):** As stated in Section 10092.1(p), the Authority considered restricting the Total Financed Amount in an Eligible Financing Agreement to be limited to \$2.5 million. This alternative was rejected because it would preclude whole-building energy retrofits which could exceed the \$2.5 million limit and that a higher Total Financed Amount would facilitate Program growth. Further, industry input showed that finance companies perform greater due diligence on projects greater than \$2.5 million, especially if the financing is not covered by a credit enhancement, so the potential increased risk associated with a larger Total Financed Amount is mitigated by additional scrutiny.

**10092.5(b)(3):** The Authority considered both more and fewer days for a refinancing agreement to be submitted to the Authority to be considered an Eligible Financing Agreement, but these other options were rejected upon the determination that 90 days is a reasonable balance between providing the Finance Provider Entity adequate time to prepare the refinancing agreement, ensure it complies with Program regulations, and submit it to the Authority and the administrative burden on the Authority to timely enroll agreements and to account for the demand for credit enhancement funds.

**10092.5(b)(6):** The Authority considered both greater and lesser amounts as a requirement for a Finance Provider Entity to take a security interest in an agreement, but these other options were rejected upon the determination, based on input from the finance industry, that \$50,000 is an

industry standard threshold for taking security in financing agreements and the Authority aligned this requirement with the industry standard.

6. Alternatives to the Proposed Regulation Action that Would Lesson 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 efficiency improvements for their businesses.

## SECTION 10092.6. ELIGIBLE FINANCING CUSTOMERS

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

The purpose of the Program is to increase investments in Energy Efficiency retrofits by making the terms of financing more attractive, resulting in energy savings and reducing greenhouse gas emissions. While the goal stated in the Decision is to “maximize the number of customers who qualify for financing,” this must be balanced with minimizing risk to the ratepayer dollars being used to fund Credit Enhancements. By setting minimum requirements for Eligible Financing Customers without being overly prescriptive, this section allows more access to financing while mitigating the risk of defaults.

2. Specific Purpose of the Regulation.

This section establishes the minimum requirements that apply to Eligible Commercial Financing Customers. It requires that Eligible Commercial Financing Customers have not filed for bankruptcy in the past five years, pass a credit check, demonstrate twelve months of bill-pay history from an IOU, and sets the criteria they must meet depending on the Total Financed Amount they are accessing.

**10092.6(a):** The purpose of this provision is to preclude financing to commercial customers that have filed for bankruptcy in the past five years.

**10092.6(b):** The purpose of this provision is to require the Finance Provider Entity performing the Underwriting role to conduct a credit check of the Eligible Commercial Financing Customer through a standard credit scoring service or, alternatively, through their utility bill pay history.

**10092.6(c):** The purpose of this provision is to establish the criteria of an Eligible Commercial Financing Customer that is provided a Total Financed Amount of up to \$350,000. The criteria set in this provision is consistent with industry standards for a financing amount up to \$350,000.

**10092.6(d):** The purpose of this provision is to define the criteria an Eligible Commercial Financing Customer must meet that is provided a Total Financed Amount of more than \$350,000.

3. Necessity.

The provisions of this section are necessary to establish minimum underwriting requirements and standards without being overly restrictive. It is necessary to avoid placing too many restrictions on Finance Provider Entities because they already have established processes for vetting customers through their underwriting procedures, which are consistent with industry standards. The requirements set forth in this section are necessary to ensure that Finance Provider Entities continue to apply minimum underwriting standards and do not rely on the credit enhancement in lieu of their normal practices due to the mitigated risk the loss reserve provides.

**10092.6(a):** This provision is necessary to prevent a Finance Provider Entity from issuing a financing agreement to an Eligible Commercial Financing Customer that has filed for bankruptcy within the past five years, which serves as an instrument of both consumer and ratepayer protection. It is necessary to balance the risk of default and potential for subsequent claims on the Loss Reserve Account with the Program goal to expand access to financing. Based on input from industry consultants, the Authority determined that five years is a reasonable time for a customer to regain their financial stability and demonstrate their ability to repay a financing agreement. Beyond the bankruptcy requirement, a Finance Provider Entity will still perform its normal underwriting procedures.

**10092.6(b):** This provision is necessary to require that the Finance Provider Entity conduct a credit check of the Eligible Commercial Financing Customer, consistent with industry standards. Utilizing general language requiring a credit check with a standard industry credit scoring service is necessary to provide the Finance Provider Entity flexibility when choosing a credit check option that is consistent with their normal underwriting practices. Many credit scoring services exist and the Authority does not want to prescribe any particular service. Allowing a Finance Provider Entity to use twelve months of utility bill-pay history is necessary to comply with the Decision to use bill payment history as an alternative approach. Further, this provision is necessary to provide a level of consumer protection by ensuring that each Finance Provider Entity is performing a credit review of each Eligible Commercial Financing Customer.

**10092.6(c):** This provision is necessary to establish minimum standards for Finance Provider Entities to participate in the Program. These additional requirements are designed to balance the increase in available financing and the protection of ratepayer funds. The \$350,000 threshold is commonly understood in the industry as the maximum financing amount for streamlined credit approvals. These three options for underwriting provide flexibility for the private market and are necessary to accommodate businesses.

**10092.6(c)(1):** This provision is necessary to allow businesses that have been in operation for under five years to have a way to participate in the Program, while still protecting ratepayer funds. Usage of EBIT/EBITDA is an industry standard method to demonstrate positive earnings and positive income that indicate they have the ability to maintain their financial obligations. Thus, a check for a positive operating profit is necessary to demonstrate that the Eligible Commercial Financing Customer has funds to repay a financing agreement.

**10092.6(c)(2):** This provision is necessary to provide more seasoned businesses a pathway for participation in the Program. Five years in business was determined by industry consultants to be a sufficient period to demonstrate that a company has been successful at managing its financial obligations. Therefore, the five-year threshold for time in business is necessary to identify those Eligible Commercial Financing Customers whose business models are resilient enough to remain a going concern for an extended amount of time, and are good candidates for investment.

**10092.6(c)(3):** This provision is necessary to provide a way for businesses that have been in operation for a period of less than five years to participate in the Program, while still providing a protection on ratepayer funds by having a personal guarantee as security for the Eligible Financing Agreement. Allowing a personal guarantee in lieu of financial history balances allows

new business to enroll in the Program while concurrently protecting ratepayer dollars from defaults resulting in claims to the Loss Reserve Accounts. A personal guarantee is necessary to accommodate Eligible Commercial Financing Customers that have not satisfied one of the other two requirements within this provision and whose principal chooses to utilize their personal credit to guarantee the financing agreement.

**10092.6(d):** This provision is necessary to indicate that Eligible Commercial Customers accessing a Total Financed Amount of greater than \$350,000 have an adequate ability to meet their debt obligations. The amount of \$350,000 is an industry standard threshold triggering higher levels of underwriting scrutiny for financing agreements. It is necessary to utilize additional scrutiny because financing \$350,000 could expose ratepayer funds to greater risk since the financed amount, and related Loss Reserve Contribution, is greater. Further, the payment amount for these larger amounts is also larger, resulting in a greater monthly burden on the Eligible Commercial Financing Customer.

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

The Authority relied on experts from both the public and private sectors, and rules and regulations for similar programs in California and other states to develop the definitions used in this section. In addition, the Authority relied on direct discussions with current and former staff from other states or programs with similar programs. The eligibility criteria, as defined in this regulation, were established in consultation with the California Public Utilities Commission, investor owned utilities staff, and other stakeholders. The Authority relied upon the Decision and the following related CPUC documents (subsequently referred to collectively throughout this document as the “Proceeding”) in proposing the adoption of this regulation:

- Decision 13-09-044, Decision Implementing 2013-14 Energy Efficiency Financing Pilot Programs (the “Decision”), issued September 20, 2013
- 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, issued September 11, 2014
- Administrative Law Judge’s Ruling regarding Changes to Decision 13-09-044, issued July 23, 2015
- Assigned Commissioner’s Ruling Extending Pilot Programs, issued August 25, 2014
- Decision 15-06-008 Modifying Decision 13-09-044, Issued June 11, 2015
- Administrative Law Judge’s Ruling Requesting Comments on Harcourt Brown & Carey Revised Recommendation Regarding Energy Efficiency Equipment Lease financing, issued July 23, 2015
- Decision 15-12-002, Modifying Decision 13-09-044, Issued December 3, 2015
- Decision 17-03-026, Decision Addressing Energy Efficiency Financing Pilot Programs Originally Ordered in Decision 13-09-044, Issued March 23, 2017
- Resolution E-4900, Adopts metrics as tools to contribute to the determination of the long-term viability of energy efficiency finance pilots, December 14, 2017

The Authority relied upon the following documents and studies (subsequently referred to collectively throughout this document as the “Studies”) in proposing the adoption of this regulation:

- Energy Efficiency Financing Implementation Primer (DOE SEE Action, January 2014)
  - Financing Energy Improvements on Utility Bills (DOE SEE Action, May 2014)
  - Energy Efficiency Finance Programs-Use Case Analysis (DOE SEE Action, July 2014)
  - California Energy Efficiency Finance Data Working Group Final Report (California Energy Efficiency Finance Data Working Group, December 2013)
  - Getting the Biggest Bang for the Buck - Exploring the Rationales and Design Options for Energy Efficiency Financing Programs (LBNL, December 2013)
  - Using Financing to Scale Up Energy Efficiency (DOE SEE Action, July 2013)
  - Recommendations for Energy Efficiency Finance Pilot Programs (Harcourt Brown & Carey, October 2012)
  - Interactions Between Energy Efficiency Programs Funded Under the Recovery Act and Utility funded Energy Efficiency Programs (LBNL, March 2011)
  - PG&E Energy Upgrade California 2013-2014 Home Upgrade Participant Handbook, version 4.2, July 2, 2014
  - Opinion Dynamics and Dunskey Energy Consulting, Final CPUC REEL Pilot Impact Evaluation Considerations, December 29, 2017
  - Transforming Small Business Participating in Energy Efficiency: Driving Energy Savings with a Progressive Approach to Small Business Direct Install Program, (Nexant, 2013)
  - Big Opportunities for Small Business: Successful Practices of Utility Small Commercial Energy Efficiency Program (American Council For an Energy-Efficiency Economy, November 2016)
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, or Participating Contractors. During the emergency regulation rulemaking process the Authority conducted extensive stakeholder engagement and research in the pre-rulemaking process, undertook extensive internal deliberation, and learned lessons from early Program implementation; significant alternatives considered are discussed below:

**10092.6(a):** Based on feedback from the industry, a typical bankruptcy remains on a credit report for seven years, this requirement is in-line with that time frame yet slightly more lenient. The Authority considered both more and fewer years for the requirement precluding Eligible Commercial Financing Customers from qualifying for the Program if they have filed for bankruptcy within the past 5 years, but these other options were rejected upon the determination that 5 years strikes a reasonable balance between providing sufficient time for the Eligible Commercial Financing Customer to recover from bankruptcy and demonstrate its ability to manage its finances and the Authority's responsibility to design safeguards that protect ratepayer funds.

**10092.6(b):** No alternatives considered. The 12-month bill-pay history option is required by the Decision.

**10092.6(c) and (d):** The Authority considered both a greater and lesser Total Finance Amount as a limit under which these criteria apply, but these other options were rejected upon the determination that the finance industry standard for conducting a more thorough financial review is \$350,000. The \$350,000 threshold in these provisions align with the industry standard and requires the Finance Provider Entity perform a creditworthiness evaluation based on the options listed.

**10092.6(c)(1):** The Authority considered both more and fewer years for an Eligible Commercial Financing Customer to show an operating profit, but those options were rejected upon the determination that two years of operating profit was adequate to show a track record of profitability while not precluding newer businesses particularly when this is a minimum criteria designed to be enhanced by the Finance Provider Entity's standard underwriting process.

**10092.6(c)(2):** The Authority considered both more and fewer years for an Eligible Commercial Financing Customer to have been in business, but those options were rejected upon the determination that 5 years is an adequate amount of time for a business to demonstrate that its business model is resilient enough to remain a going concern without precluding those businesses that attempt to show either no profit or an operating loss, particularly when this is a minimum criteria designed to be enhanced by the Finance Provider Entity's standard underwriting process.

**10092.6(d)(1):** The Authority considered both more and fewer years for an Eligible Commercial Financing Customer to show a positive operating profit utilizing either EBIT or EBITDA, but those options were rejected because based on feedback from stakeholders, two out of the past five years provides flexibility to the Eligible Commercial Financing Customer to demonstrate profitability without precluding Program participation from newer businesses or those that have shown no profit or a loss, particularly when this is a minimum criteria designed to be enhanced by the Finance Provider Entity's standard underwriting process and is combined with the debt service coverage ratio requirement. Further the Authority feels this requirement is appropriate given the credit enhancement is significantly lower for financing agreements over \$50,000.

**10092.6(d)(2):** The Authority considered both greater and lower ratios for an Eligible Commercial Financing Customer to demonstrate the ability to sufficiently service its debt, but based on feedback from stakeholders, those options were rejected because a coverage ratio of 1.10 strikes a reasonable balance between holding only a reasonable amount of debt and the realization that businesses often need to assume debt in order to operate. The Authority also considered this ratio reasonable when combined with the requirement for positive operating profit. Further, the Authority considered both more and fewer years for an Eligible Commercial Financing Customer to demonstrate a debt service coverage ratio greater than 1.10, but based on feedback from stakeholders, those options were rejected because two out of the past five years provides flexibility to the Eligible Commercial Financing Customer to demonstrate a reasonable amount of debt and the ability to manage that debt. The Authority also considered the flexibility of this requirement to be reasonable because it is a minimum criteria designed to be enhanced by the Finance Provider Entity's standard underwriting process and is combined with the debt



service coverage ratio requirement. Finally, the Authority feels this requirement is appropriate given the credit enhancement is significantly lower for financing agreements over \$50,000.

6. Alternatives to the Proposed Regulation Action that Would Lesson 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 efficiency improvements for their businesses.

## SECTION 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. By establishing these eligibility requirements, the Authority ensures that ratepayer funds are financing approved measures that are installed by approved Participating Contractors and Participating Project Developers. It also ensures that Projects are more likely to result in energy savings, as is the intended effect of the Program. Projects that result in energy savings will help to decrease greenhouse gas emissions, while also decreasing the risk of default, as Eligible Commercial Financing Customers will be spending less on energy costs.

2. Specific Purpose of the Regulation.

This section details the requirements for Projects to be eligible for financing through the Program. It describes the general eligibility criteria that apply to all Projects, such as a Bill Impact Estimate and inclusion of an Energy Saving Measure, as well as the specific eligibility requirements for Self-Installers. This section specifies the three ways that an Energy Saving Measure may qualify for the Program, and outlines the scope and process for review and verification of installed Energy Saving Measures to ensure compliance with Program requirements, which vary depending on the qualification method.

**10092.7(a):** The purpose of this provision is to define the general eligibility requirements for which a Project must comply to be eligible for financing through the Program, including Participating Contractor enrollment in the Program, inclusion of at least one Energy Saving Measure, and compliance with all applicable laws and regulations.

**10092.7(a)(1):** The purpose of this provision is to require that the Participating Contractor installing Energy Saving Measures enroll in the Program prior to the Scope of Work Completion Date for the Scope of Work on which it worked as a Project eligibility requirement.

**10092.7(a)(2):** The purpose of this provision is to require that a Bill Impact Estimate be provided to the Eligible Commercial Financing Customer.

**10092.7(a)(3):** The purpose of this provision is to require that the Project include at least one Energy Saving Measure to be eligible.

**10092.7(a)(4):** The purpose of this provision is to limit the utilization of the ESM List Method to \$350,000 in pre-qualified non-lighting measures on a Project.

**10092.7(a)(5):** The purpose of this provision is to stipulate that the Participating Contractor is required to hold a CSLB license relevant to the work performed in its Scope of Work.

**10092.7(a)(6):** The purpose of this provision is to require that work performed on the Project complies with all applicable local, state, and federal laws, regulations, and building standards.

**10092.7(a)(7):** The purpose of this provision is to require that all relevant permits and approvals are obtained for work performed on the Project as a Project eligibility requirement.

**10092.7(b):** The purpose of this provision is to specify the three methods through which a measure may qualify as an Energy Saving Measure, and require that each Energy Saving Measure must satisfy at least one of those methods.

**10092.7(b)(1):** The purpose of this provision is to detail the requirements for qualifying an Energy Saving Measure through the ESM List Method including establishing that any measure that qualifies for an IOU, REN, or CCA rebate is eligible to also qualify for the Program through the ESM List Method.

**10092.7(b)(2):** The purpose of this provision is to detail the requirements for qualifying an Energy Saving Measure through the IOU Custom Measure Method.

**10092.7(b)(3):** The purpose of this provision is to detail the requirements for qualifying an Energy Saving Measure through the Professionally Certified Measure Method.

**10092.7(c)(1):** The purpose of this provision is to stipulate the requirements for the Eligible Commercial Financing Customer to install Energy Saving Measures and Non-ESMs or have them installed without a Participating Contractor.

**10092.7(c)(2):** The purpose of this provision is to require that a Participating Project Developer be present on any Project with self-installed measures in order for the self-installed measures to be eligible for the Program and to specify the data that the Participating Project Developer must submit for any self-installed measures.

**10092.7(d):** The purpose of this provision is to detail the Authority's quality assurance and quality control process and requirements. It additionally details the types of verification that the Authority may conduct. This provision also describes the potential actions that the Authority may take in the case of misrepresentation or noncompliance with Program regulations.

**10092.7(d)(1):** The purpose of this provision is to specify the three types of Project reviews and verifications the Authority may conduct for quality assurance within one year of the Enrollment Date of the Enrolled Financing Agreement.

**10092.7(d)(2):** The purpose of this provision is to establish that the Authority will not conduct field verification of Projects with any IOU Custom measures.

**10092.7(d)(3):** The purpose of this provision is to establish that the Authority will notify the Eligible Commercial Financing Customer at least ten business days before conducting a field verification.

**10092.7(d)(4):** The purpose of this provision is to establish that the Authority may remove a Participating Contractor from the Program if it finds that its Scope of Work was not installed in compliance with the regulations, or that information related to the work was misrepresented.

**10092.7(d)(5):** The purpose of this provision is to establish that the Authority may remove a Participating Project Developer from the Program if it finds that a Self-Installer's Scope of Work was not installed in compliance with the regulations, or that information related to the Project was misrepresented.

### 3. Necessity.

This section is necessary to establish Project eligibility criteria, measure eligibility criteria, and a verification process for Projects that do not include IOU Custom measures. All improvements installed through the Program must meet these criteria to help ensure Project performance and consumer protection, and help meet the state's energy policy goals of achieving energy conservation and reduction.

**10092.7(a)(1):** This provision is necessary to establish appropriate quality assurance measures under the Program. Requiring contractor enrollment prior to completion of their Scope of Work ensures that the contractor has undergone the Program training prior to the Project being completed. It would be overly prescriptive to require contractors to enroll prior to beginning work, as it may delay new Projects or exclude otherwise eligible projects that are underway.

**10092.7(a)(2):** This provision is necessary to comply with the requirements of the Decision that small business customers be provided with a Bill Impact Estimate in order to provide them information on potential Energy Efficiency cost savings. This is necessary because the small business customer is making a financial commitment and it is important that they have sufficient information about current and projected energy cost savings to evaluate their financial decision. Projects can vary greatly in their business models, so it is necessary for the Program to allow for flexibility in which party provides the Bill Impact Estimate to the Eligible Commercial Financing Customer – the Participating Contractor, Participating Project Developer, or the Primary Finance Provider Entity.

**10092.7(a)(3):** This provision is needed to ensure that all projects financed through the Program include measures that are anticipated to achieve energy savings, keeping the Program aligned with CPUC goals to address greenhouse gas emissions through investment in energy efficiency resources that reduce energy consumption.

**10092.7(a)(4):** This provision is necessary because larger projects generally involve greater levels of complexity, particularly for non-lighting measures, and as a result require more scrutiny to evaluate energy savings. The \$350,000 threshold aligns with the Total Financed Amount threshold for customer credit criteria for Program eligibility, which is a finance industry standard for conducting more rigorous financial and project scrutiny.

**10092.7(a)(5):** This provision is necessary to protect the consumer and help ensure that all Participating Contractors hold a valid, current Contractors State License Board license, and that

the work performed in their Scope of Work is relevant to their license, in accordance with the requirements established by the CSLB.

**10092.7(a)(6):** This provision is necessary to protect Eligible Commercial Financing Customers by ensuring that in addition to all Program requirements, participants must ensure that Projects will comply with all local, state, and federal laws, regulations, and building standards.

**10092.7(a)(7):** This provision is necessary to protect Eligible Commercial Financing Customers by ensuring that in addition to all Program requirements, Participating Contractors will acquire all relevant permits and approvals required for their Scope of Work. This requirement is necessary to protect the Eligible Commercial Financing Customer and will help ensure Projects are installed safely and in accordance with state and local regulations.

**10092.7(b):** This provision is needed to ensure that measures being installed are proven or reasonably anticipated to result in energy savings, which is essential to achieve the Program's goal of decreasing energy consumption.

**10092.7(b)(1):** This provision is necessary to create a simple and streamlined method by which measures can be approved as Energy Saving Measures and are likely to save energy in the majority of applications in the commercial industry. The ESM List includes the most common and established Energy Saving Measures in a single list, sorted by category.

**10092.7(b)(2):** This provision is necessary to allow more specific and customized energy saving projects, to align the Program with IOU custom rebate and incentive programs, and to comply with the Decision. IOU Custom measures have undergone extensive vetting by the IOUs and been approved by the CPUC to receive a rebate or incentive; the Authority accepts the IOU vetting as verification of energy savings and accepts these measures as energy saving. It is necessary to limit the time an IOU Custom approval remains valid as an Energy Saving Measure to within 24 months from the date of the IOU Custom approval to ensure the energy saving relevance of the measures while providing ample time to order and install the measures.

**10092.7(b)(3):** This provision is necessary to create a flexible option for approval of complex, customized, or cutting-edge measures that aren't included on the ESM List, or for Projects that exceed \$350,000 of non-lighting measures from the ESM List. It is necessary to have these measures certified as energy saving by industry experts – either a Professional Engineer or Certified Energy Manager – in order to ensure they are anticipated to result in energy savings and so that they align with the goals of the Program.

**10092.7(c)(1):** This provision is necessary to establish which measures may be self-installed by the customer. Allowing self-installable measures in the Program is necessary because there are certain measures that can be cost-effectively and safely self-installed. It was necessary to include Non-ESMs as self-installable so that customers desiring to make non-energy related improvements, such as painting, can do so cost-effectively. This provision is necessary to ensure the appropriate use of ratepayer funds.

**10092.7(c)(2):** This provision is necessary to establish quality controls. This provision is necessary because the Authority needs to know that self-install measures have been installed correctly, and a Participating Project Developer has the ability to verify that. This provision will also ensure that ratepayer funds are being used appropriately. The data collection requirement will ensure consistency with other Projects.

**10092.7(d):** This provision is necessary to establish flexible and cost-effective ways to ensure that Projects meet Program requirements and that measures were correctly installed. It is also necessary to describe the consequences for violations encountered during the quality assurance process, and the Authority's power to rectify violations and misrepresentations.

**10092.7(d)(1):** This provision is necessary to present the three types of review and verification processes the Authority may undertake, and to define a specific timeframe it could take place. The performance of audits will assist in Program evaluation.

**10092.7(d)(2):** This provision is necessary to be cost-effective with the quality control efforts. Field verification would be redundant for IOU Custom measures, which already go through IOU pre- and post-installation quality assurance and verification processes.

**10092.7(d)(3):** This provision is necessary to provide an Eligible Commercial Financing Customer with reasonable and adequate time to prepare for an on-site field verification visit. A ten-day period reflects California IOU industry standards for on-site inspections and this provision aligns the Program regulations with that industry standard.

**10092.7(d)(4):** This provision is necessary to clearly identify the consequences to a Participating Contractor for misrepresenting information to the Authority or noncompliance with Program regulations. While the Authority may remove a Participating Contractor from future involvement in the Program, the provision to notify other government agencies and entities is necessary for the Authority to take additional appropriate action, and share information with other agencies and the IOUs. This provision is necessary to protect ratepayer dollars and ensure they are being used in accordance with the goals of the Program.

**10092.7(d)(5):** This provision is necessary to clearly identify the consequences to a Participating Project Developer for misrepresenting information to the Authority or noncompliance with Program regulations. This provision is necessary for the Authority to take additional appropriate action, and share information with other state agencies and IOUs. This helps further protect ratepayer dollars and ensure they are being used in accordance with the goals of the Program.

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

The Authority relied on experts from both the public and private sectors, and rules and regulations for similar programs in California and other states to develop the definitions used in this section. In addition, the Authority relied on direct discussions with current and former staff from other states or programs with similar programs. The eligibility criteria, as defined in this regulation, were established in consultation with the California Public Utilities Commission, investor owned utilities staff, and other stakeholders. The Authority relied upon the Decision and

the following related CPUC documents (subsequently referred to collectively throughout this document as the “Proceeding”) in proposing the adoption of this regulation:

- Decision 13-09-044, Decision Implementing 2013-14 Energy Efficiency Financing Pilot Programs (the “Decision”), issued September 20, 2013
- 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, issued September 11, 2014
- Administrative Law Judge’s Ruling regarding Changes to Decision 13-09-044, issued July 23, 2015
- Assigned Commissioner’s Ruling Extending Pilot Programs, issued August 25, 2014
- Decision 15-06-008 Modifying Decision 13-09-044, Issued June 11, 2015
- Administrative Law Judge’s Ruling Requesting Comments on Harcourt Brown & Carey Revised Recommendation Regarding Energy Efficiency Equipment Lease financing, issued July 23, 2015
- Decision 15-12-002, Modifying Decision 13-09-044, Issued December 3, 2015
- Decision 17-03-026, Decision Addressing Energy Efficiency Financing Pilot Programs Originally Ordered in Decision 13-09-044, Issued March 23, 2017
- Resolution E-4900, Adopts metrics as tools to contribute to the determination of the long-term viability of energy efficiency finance pilots, December 14, 2017

The Authority relied upon the following documents and studies (subsequently referred to collectively throughout this document as the “Studies”) in proposing the adoption of this regulation:

- Energy Efficiency Financing Implementation Primer (DOE SEE Action, January 2014)
- Financing Energy Improvements on Utility Bills (DOE SEE Action, May 2014)
- Energy Efficiency Finance Programs-Use Case Analysis (DOE SEE Action, July 2014)
- California Energy Efficiency Finance Data Working Group Final Report (California Energy Efficiency Finance Data Working Group, December 2013)
- Getting the Biggest Bang for the Buck - Exploring the Rationales and Design Options for Energy Efficiency Financing Programs (LBNL, December 2013)
- Using Financing to Scale Up Energy Efficiency (DOE SEE Action, July 2013)
- Recommendations for Energy Efficiency Finance Pilot Programs (Harcourt Brown & Carey, October 2012)
- Interactions Between Energy Efficiency Programs Funded Under the Recovery Act and Utility funded Energy Efficiency Programs (LBNL, March 2011)
- PG&E Energy Upgrade California 2013-2014 Home Upgrade Participant Handbook, version 4.2, July 2, 2014
- Opinion Dynamics and Dunskey Energy Consulting, Final CPUC REEL Pilot Impact Evaluation Considerations, December 29, 2017
- Transforming Small Business Participating in Energy Efficiency: Driving Energy Savings with a Progressive Approach to Small Business Direct Install Program, (Nexant, 2013)
- Big Opportunities for Small Business: Successful Practices of Utility Small Commercial Energy Efficiency Program (American Council For an Energy-Efficiency Economy, November 2016)

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, or Participating Contractors. During the emergency regulation rulemaking process the Authority conducted extensive stakeholder engagement and research in the pre-rulemaking process, undertook extensive internal deliberation, and learned lessons from early Program implementation; significant alternatives considered are discussed below:

**10092.7(a)(1):** The Authority considered both more and less time for a Participating Contractor to enroll in the Program and rejected other alternatives because requiring them to enroll prior to the Contractor's Scope of Work Completion Date is a reasonable balance between providing the contractor sufficient time to enroll in the Program, particularly if a Project is underway, and the Authority's need to ensure participants are properly trained on the Program and meet the minimum requirements contained in the application process.

**10092.7(a)(3):** The Authority considered requiring more than one ESM to be installed on a project to qualify for the Program but rejected that option because in the commercial energy efficiency market, one ESM could be a significant upgrade to a building which would meet the goals of the Program. Further, the requirements relating to the credit enhancement protect ratepayer funds by requiring ESMs to comprise no less than 70% of a Loss Reserve Contribution.

**10092.7(a)(4):** The Authority considered restricting the cost of non-lighting measures to more and less than \$350,000 but rejected those options because feedback from the industry indicated that \$350,000 is the threshold after which non-lighting measures on projects receive greater scrutiny over potential energy savings. The Authority chose \$350,000 to align with the industry standard and to align this requirement with the \$350,000 threshold requiring greater underwriting standards in Section 10092.6(d).

**10092.7(b)(2):** The Authority considered both more and fewer months for an IOU Custom Approval to remain valid prior to installation, but these other options were rejected upon the determination that 24 months is a reasonable balance between providing sufficient time for the Participating Contractor to order approved equipment, for the manufacturer to produce the equipment and deliver it, and for the Participating Contractor to install the equipment, with the burden on the Authority to administer the Program and appropriately encumber and account credit enhancement funds.

**10092.7(c):** The Authority considered precluding self-installable measures but rejected that option because it provides a cost effective way for a business owner to install ESMs, thus advancing the Program's goal to reduce energy consumption and expand impact.

**10092.7(d)(1):** The Authority considered both more and less time to perform a post-project review or inspection, but these other options were rejected upon the determination that one year



is a reasonable balance between providing sufficient time for the Authority to process an Enrolled Financing Agreement and schedule a review or inspection and not imposing too great a burden on the Eligible Commercial Financing Customer by extending the potential timeframe for a possible verification at its property.

**10092.7(d)(3):** The Authority considered both more and fewer days to notify a Eligible Commercial Financing Customer of a field verification, but these other options were rejected upon the determination that 10 business days is a reasonable balance between providing sufficient notice to the Eligible Commercial Financing Customer and the burden on the Authority to administer the Program and verify that Program funds were used according to Program requirements.

6. Alternatives to the Proposed Regulation Action that Would Lesson 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 efficiency improvements for their businesses.

## SECTION 10092.8. FINANCING SUBMITTAL AND ENROLLMENT

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

The Program has been established to investigate ways that public policy can effectuate reductions in energy consumption, pursuant to goals of California's Energy Action Plan (EAP). Specifically, it utilizes ratepayer funds to support financing options with lower barriers such as increases in financing duration, lower interest rates, or other measurable and advantageous benefits that incentivize utility customers to invest in Energy Efficiency retrofits that reduce greenhouse gas emissions for all Californians. To evaluate the effectiveness of the Program in a meaningful way, the Authority sets enrollment requirements for Eligible Financing Agreements, and collects data on the customers who participate in the Program and the Projects that are financed through it.

### 2. Specific Purpose of the Regulation.

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 party to the Authority for the Eligible Financing Agreement for a Project to enroll in the Program.

**10092.8(a):** The purpose of this provision is to establish the timing and requirements for submitting completed Eligible Financing Agreements to the Authority for Project enrollment, and for the Authority to process and make determinations on acceptance.

**10029.8(a)(1):** The purpose of this provision is to stipulate prerequisites for when a completed Eligible Financing Agreement may be submitted.

**10092.8(a)(2):** The purpose of this provision is to establish a timing deadline for an Eligible Financing Agreement to be submitted.

**10092.8(a)(3):** The purpose of this provision is to establish a timing deadline for the Authority to enroll or deny an Eligible Financing Agreement.

**10092.8(b)(1):** The purpose of this provision is to stipulate which documents are required to be provided to the Authority for submittal of an Eligible Financing Agreement for enrollment.

**10092.8(b)(1)(A):** The purpose of this provision is to require a utility bill from each IOU providing electric or gas fuel service to each of the Eligible Properties where installation of Energy Saving Measures are being financed in order for a financing submittal to be complete.

**10092.8(b)(1)(B):** The purpose of this provision is to require any IOU Custom incentive approval letter or notice to proceed for a Project which includes Energy Saving Measures receiving an IOU Custom rebate or incentive in order for a financing submittal to be complete.

**10092.8(b)(1)(C):** The purpose of this provision is to require a CHEEF Privacy Rights Disclosure Form signed by the Eligible Commercial Financing Customer of each Project in order for a financing submittal to be complete.

**10092.8(b)(1)(D):** The purpose of this provision is to require a final invoice by the Participating Contractor for the contractor's completed Scope of Work in order for a financing submittal to be complete.

**10092.8(b)(2):** The purpose of this provision is to detail the data required to be provided to the Authority for submittal of an Eligible Financing Agreement for enrollment.

**10092.8(b)(2)(A):** The purpose of this provision is to specify that the Scope of Work Completion date for any work performed by the Participating Contractor must be provided to the Authority by the Participating Contractor in order for a financing submittal to be complete.

**10092.8(b)(2)(B)(i):** The purpose of this provision is to quantify any fees charged by the Participating Project Developer for their services and ascertain the services rendered in exchange for those fees. This data must be provided to the Authority solely by the Participating Project Developer.

**10092.8(b)(2)(B)(ii):** The purpose of this provision is to specify that the Scope of Work Completion date for any work completed by a Self-Installer must be provided to the Authority by the Participating Project Developer in order for a financing submittal to be complete. This data must be provided to the Authority solely by the Participating Project Developer.

**10092.8(b)(2)(C):** The purpose of this provision is to specify the data that must be provided to the Authority by the Energy Professional for each Energy Saving Measure qualifying through the Professionally Certified Measure Method in order for a financing submittal to be complete.

**10092.8(b)(2)(D):** The purpose of this provision is to specify the data that must be provided to the Authority solely by the Finance Provider Entity in order for a financing submittal to be complete.

**10092.8(b)(2)(D)(i):** The purpose of this provision is to specify that the amount of Capitalized Interest included in the Total Financed Amount and related to the Project, if any, must be provided to the Authority by the Finance Provider Entity in order for a financing submittal to be complete.

**10092.8(b)(2)(D)(ii):** The purpose of this provision is to specify the data related to the Eligible Commercial Financing Customer that must be provided to the Authority by the Finance Provider Entity in order for a financing submittal to be complete.

**10092.8(b)(2)(D)(iii):** The purpose of this provision is to specify the data related to all Eligible Financing Agreements that must be provided to the Authority by the Finance Provider Entity in order for a financing submittal to be complete.

**10092.8(b)(2)(D)(iv):** The purpose of this provision is to specify the data related to an Eligible Loan and Eligible Lease or Eligible Equipment Financing Agreement that must be provided to the Authority by the Finance Provider Entity in order for a financing submittal to be complete.

**10092.8(b)(2)(D)(v):** The purpose of this provision is to specify the data related to Eligible Service Agreements and Eligible Savings-Based Payment Agreements that must be provided to the Authority by the Finance Provider Entity in order for a financing submittal to be complete.

**10092.8(b)(2)(E):** The purpose of this provision is to specify the data that must be provided to the Authority by either by the Participating Project Developer or Finance Provider Entity in order for a financing submittal to be complete.

**10092.8(b)(2)(E)(i):** The purpose of this provision is to specify the data related to Ancillary Elements that are Non-ESMs that are installed on the Project by a contractor not enrolled with the Program that must be provided to the Authority by either the Participating Project Developer or Finance Provider Entity in order for a financing submittal to be complete.

**10092.8(b)(2)(E)(ii):** The purpose of this provision is to specify the data related to Distributed Generation measures installed on the Project that must be provided to the Authority by either the Participating Project Developer or Finance Provider Entity in order for a financing submittal to be complete.

**10092.8(b)(2)(F):** The purpose of this provision is to specify the data that must be provided to the Authority by the Participating Contractor, Participating Project Developer, or Finance Provider Entity.

**10092.8(b)(2)(F)(i):** The purpose of this provision is to specify the data related to the Eligible Commercial Financing Customer that must be provided to the Authority by either the Participating Contractor, Participating Project Developer, or Finance Provider Entity in order for a financing submittal to be complete.

**10092.8(b)(2)(F)(ii):** The purpose of this provision is to specify the data related to each Eligible Property that must be provided to the Authority by either the Participating Contractor, Participating Project Developer, or Finance Provider Entity in order for a financing submittal to be complete.

**10092.8(b)(2)(F)(iii):** The purpose of this provision is to specify the data related to each Energy Saving Measure that must be provided to the Authority by either the Participating Contractor, Participating Project Developer, or Finance Provider Entity in order for a financing submittal to be complete.

**10092.8(b)(2)(F)(iv):** The purpose of this provision is to specify the data related to each installed Energy Saving Measure that qualified through either the IOU Custom Measure Method or the Professionally Certified Measure Method that must be provided to the Authority by either the Participating Contractor, Participating Project Developer, or Finance Provider Entity in order for a financing submittal to be complete.

**10092.8(b)(2)(F)(v):** The purpose of this provision is to specify the data related to each installed Energy Saving Measure that qualified through the Professionally Certified Measure Method that must be provided to the Authority by either the Participating Contractor, Participating Project Developer, or Finance Provider Entity in order for a financing submittal to be complete.

**10092.8(b)(2)(F)(vi):** The purpose of this provision is to specify the data related to each Scope of Work that must be provided to the Authority by either the Participating Contractor, Participating Project Developer, or Finance Provider Entity in order for a financing submittal to be complete.

**10092.8(b)(2)(F)(vii):** The purpose of this provision is to specify the data related to Projects for which either the Eligible Commercial Financing Customer or Participating Contractor is seeking a rebate or incentive through an IOU, REN, or CCA that must be provided to the Authority by either the Participating Contractor, Participating Project Developer, or Finance Provider Entity in order for a financing submittal to be complete.

**10092.8(b)(3):** The purpose of this provision is to detail the certifications required to be provided to the Authority as part of a completed submittal of an Eligible Financing Agreement for enrollment.

**10092.8(b)(3)(A):** The purpose of this provision is to specify the certifications required to be signed by a person authorized to legally bind the Participating Contractor and be submitted to the Authority in order for a financing submittal to be complete. The purpose of the certifications are to ensure that installation was completed in accordance to Program, state, and federal regulations, that all permits were approved, or in the process of being approved, and that all information provided to the Authority is complete, true, and correct.

**10092.8(b)(3)(B):** The purpose of this provision is to specify the certifications required to be signed by a person authorized to legally bind the Participating Project Developer and be submitted to the Authority in order for a financing submittal to be complete. The purpose of the certification is to ensure that all of the information provided by both the Participating Contractor and Participating Project Developer is true and correct to the best of the Participating Project Developer's knowledge.

**10092.8(b)(3)(C):** The purpose of this provision is to specify the certifications required from the Primary Finance Provider Entity and be submitted to the Authority in order for a financing submittal to be complete. The purpose of the certification is to ensure that all of the information provided by the Primary Finance Provider Entity is true and correct to the best of its knowledge

**10092.8(b)(3)(D):** The purpose of this provision is to specify the certifications required to be signed by a person authorized to legally bind the Eligible Commercial Financing Customer and be submitted to the Authority in order for a financing submittal to be complete. The purpose of the certifications are to ensure that installation was completed to its satisfaction, that it understands that Authority and IOUs made no guarantee of performance, quality or workmanship relating to the installed measures, that all permits were approved, or in the process of being approved, that they have been provided a Bill Impact Estimate, that they agree to a post-

project inspection, and that all information provided to the Authority is complete, true, and correct.

**10092.8(b)(3)(E):** The purpose of this provision is to specify the certifications required from an Energy Professional Entity and be submitted to the Authority in order for a financing submittal to be complete. The purpose of this is to ensure that each Energy Saving Measure qualifying through the Professionally Certified Measure Method will save energy, and that the Energy Professional's estimates quantifying the energy savings are true and correct to the best of the its knowledge.

### 3. Necessity.

This section is necessary for the Program to articulate requirements that ensure Eligible Financing Agreements comply with and are eligibility under the Program regulations when submitted for enrollment. Additionally, the requirements standardize the submitted data points, which in aggregate will allow the Authority to analyze the impact and public benefits of the Program.

**10092.8(a):** This provision is necessary to outline the requirements and timeframe for submitting and processing completed Eligible Financing Agreements. These are necessary to effectively implement the Program and ensure that Program funds are efficiently committed, distributed, and accounted for. The lack of timetables would create uncertainty in the Program.

**10092.8(a)(1):** This provision is necessary to establish that all Scopes of Work on a Project must be completed and the Eligible Financing Agreement closed, so that all Project details submitted to the Authority are certain and not subject to change.

**10092.8(a)(2):** This provision is necessary to establish a submittal deadline for the Eligible Financing Agreement that allows reasonable time to procure and compile the required data, documents, and ensures timely submittal of the information to effectively and accurately distribute Program funds.

**10092.8(a)(3):** This provision is necessary to give the Authority adequate time to review and make a determination on a financing agreement submittal, while maintaining a timely response to the Finance Provider Entity. The ten-day time limit was determined based on the Authority's experience in similar programs that it administers.

**10092.8(b)(1):** This provision is necessary to specify the documents required for submittal of an Eligible Financing Agreement for enrollment, while allowing flexibility for the Participating Contractor, Participating Project Developer, or Finance Provider Entity to provide each document to the Authority, unless otherwise specified. It was necessary to provide that flexibility to accommodate various business models and encourage more Projects.

**10092.8(b)(1)(A):** This provision is necessary to require than an IOU utility bill is provided to the Eligible Property by an IOU, and that the fuel source for the installed Energy Saving Measure matches service billed by the IOU because the Program is capitalized with IOU

ratepayer funds. This requirement ensures ratepayer funds are utilized as intended by the Decision and assists in identifying and preventing fraud.

**10092.8(b)(1)(B):** This provision is necessary to substantiate that an Energy Saving Measure qualifying through the IOU Custom Measure Method has been properly vetted and approved by the IOU for which it receives a utility fuel, and to confirm the installed measure is consistent with that approved by the IOU. This documentation is necessary to ensure compliance with the Program.

**10029.8(b)(1)(C):** This provision is necessary for the financing customer to authorize the release of required data to the Authority, and to inform the customer of their consumer privacy rights.

**10029.8(b)(1)(D):** This provision is necessary to confirm the cost of Energy Saving Measures and Non-ESMs installed by the Participating Contractor at an Eligible Property. The data provides the Authority with the necessary information to calculate the credit enhancement for the Eligible Financing Agreement, and verify that measures were installed and that they were accurately identified.

**10092.8(b)(2):** This provision and its provisions are necessary to collect standardized data points for analysis of Program effectiveness and compliance verification.

**10092.8(b)(2)(A):** This provision is necessary to identify when work performed on the Project by a Participating Contractor was completed, and serves as a benchmark for timely submittal of the Eligible Financing Agreement by the Finance Provider Entity and the deadline by which the contractor must be enrolled as a Participating Contractor in the Program.

**10092.8(b)(2)(B)(i):** This provision is necessary to quantify any fees charged by the Participating Project Developer and to confirm the extent of its role in the Project while providing cost transparency to the Eligible Commercial Financing Customer and the Authority.

**10092.8(b)(2)(B)(ii):** This provision is necessary to identify when work performed on the Project by a Self-Installer was completed, and serves as a benchmark for timely submittal of the Eligible Financing Agreement by the Finance Provider Entity.

**10092.8(b)(2)(C)(i)(a):** This provision is necessary to identify and quantify the use of Energy Efficiency and Demand Response in the measures qualifying through the Professionally Certified Measure Method.

**10092.8(b)(2)(C)(i)(b-c):** These provisions are necessary to substantiate the inclusion of measures that qualify through the Professionally Certified Measure Method by having the Energy Professional validate and quantify estimated electrical and/or gas savings, and by matching the fuel source being conserved to the IOU service at the Eligible Property in order to align the Program with the requirements of the Decision.

**10092.8(b)(2)(D):** This provision is necessary to collect and analyze demographic data about the Eligible Commercial Financing Customer to determine the ability of the Program to reach a

broad cross section of IOU ratepayers, including those located in economically disadvantaged communities and in underserved market sectors such as those who otherwise would not qualify for financing, in accordance with Program goals. Collection of demographic data is also needed in order to target marketing and outreach. This provision is also necessary to aggregate data on terms, rates, costs, and payments for the Eligible Financing Agreement to determine the benefits realized by Eligible Commercial Financing Customer through the Program compared to offerings from Finance Provider Entities without a credit enhancement, and track repayment performance.

**10092.8(b)(2)(D)(i):** This provision is necessary because Capitalized Interest included in the Total Financed Amount is part of the Claim Eligible Financed Amount and is needed to calculate the Finance Provider Entity's credit enhancement. This provision is also necessary to determine whether Eligible Commercial Financing Customers are utilizing bridge loans for initial Project costs, and rolling the Capitalized Interest into new financing under the Program.

**10092.8(b)(2)(D)(ii):** This provision is necessary to provide information on the Eligible Commercial Financing Customers benefitting from financing options made available through the Program in order to understand who the Program benefits, how to conduct marketing, education, and outreach to hard to reach communities as required by the Decision, and to inform future Program design and implementation. It is further necessary in order to determine compliance with Program regulations relating to customer eligibility.

**10092.8(b)(2)(D)(iii)(a):** This provision is necessary for the Authority to relate the Eligible Financing Agreement to the Finance Provider Entity's own identification code so that the agreement can be identified when corresponding with the Finance Provider Entity without utilizing the Eligible Commercial Financing Customer's personal identifying information. This will assist in anonymizing data and protecting customer financial information.

**10092.8(b)(2)(D)(iii)(b):** This provision is necessary to establish compliance requirements dependent on the type of Eligible Financing Agreement issued, calculate the Total Financed Amount, and, in the event of a charge-off, calculate the Total Charge-Off Amount. It is also necessary for tracking and analysis of Enrolled Financing Agreements after enrollment in the Program.

**10092.8(b)(2)(D)(iii)(c):** This provision is necessary to verify that the Eligible Financing Agreement was submitted by a person authorized to represent and legally bind the Finance Provider Entity to establish appropriate controls and due diligence. It is also necessary to establish a primary point of contact during the enrollment review process.

**10092.8(b)(2)(D)(iii)(d):** This provision is necessary to calculate the Claim-Eligible Ratio and to track the performance of Enrolled Financing Agreements based on the Total Financed Amount.

**10092.8(b)(2)(D)(iii)(e):** This provision is necessary to track whether advance payments are being required for Eligible Financing Agreements and identify the effect they have on repayment performance.



**10092.8(b)(2)(D)(iii)(f):** This provision is necessary to confirm Finance Provider Entity compliance with the Program requirement of taking a security interest, if applicable, and to track the type of security interest being taken. This provision is also necessary to ensure the Eligible Financing Agreement complies with the terms of the financing products offered by the Finance Provider Entity and approved by the Authority for use in the Program.

**10092.8(b)(2)(D)(iii)(g):** This provision is necessary to identify when the Eligible Commercial Financing Customer will begin repayment of the Eligible Financing Agreement and to protect ratepayer funds by ensuring that the Eligible Financing Agreement, which is covered by the credit enhancement, actually funds.

**10092.8(b)(2)(D)(iii)(h-i):** These provisions are necessary to ensure that the Eligible Financing Agreement complies with the terms of the financing products offered by the Finance Provider Entity and approved by the Authority for use in the Program. These provisions are also necessary to understand how the Eligible Financing Agreement term length affects the ability for the Eligible Commercial Financing Customer to afford financing, and the relationship between term length and monthly payment amount on the quantity, size, and performance of Enrolled Financing Agreements in the Program.

**10092.8(b)(2)(D)(iv):** This provision is necessary to specify data requirements unique to Eligible Loans and Eligible Leases or Eligible Equipment Financing Agreements that are needed to confirm compliance with both the Program regulations and the terms of the financing products offered by the Finance Provider Entity and approved by the Authority for use in the Program.

**10092.8(b)(2)(D)(v):** This provision is necessary to specify data requirements unique to Eligible Service Agreements and Eligible Savings-Based Payment Agreements that are needed to confirm compliance with the regulations. It is necessary to provide cost transparency to the Eligible Commercial Financing Customer and the Authority and to ensure that the Eligible Financing Agreement complies with the terms of the financing products offered by the Finance Provider Entity and approved by the Authority for use in the Program. This provision is also necessary to calculate the Total Charge-Off Amount by excluding ongoing monthly charges from that calculation.

**10092.8(b)(2)(E)(i):** This provision is necessary to detail and quantify any Non-ESMs that are installed by contractors not enrolled in the Program because these costs may be included in the Claim-Eligible Financed Amount up to a defined amount, and thus subject to a ratepayer funded credit enhancement. The contractor's CSLB license number is necessary to ensure that all claim-eligible measures are installed by a licensed contractor, in compliance with the Program.

**10092.8(b)(2)(E)(ii):** This provision is necessary to detail any Distributed Generation installed on a Project, so that the Authority can track its prevalence and analyze whether including Distributed Generation makes an Eligible Commercial Financing Customer more likely to perform Energy Efficiency upgrades. It is also necessary to confirm that Distributed Generation included in the Total Financed Amount is not included in the Claim-Eligible Financed Amount. The contractor's name and CSLB license number are necessary to identify who installed the Distributed Generation. This provision is necessary to ensure compliance with the Decision.

**10092.8(b)(2)(F)(i)(a):** This provision is necessary to identify the Eligible Commercial Financing Customer and collect basic contact information.

**10092.8(b)(2)(F)(i)(b):** This provision is necessary to track whether small businesses participating in the Program are performing Energy Efficiency upgrades to property they own or property they rent, and whether or not they occupy the property so that the Authority can target marketing, education, and outreach efforts.

**10092.8(b)(2)(F)(i)(c):** This provision is necessary to identify each fuel service billed by an IOU at the Eligible Property in order to verify the fuel source for each installed Energy Saving Measure matches the service billed by an IOU as required by the Decision. It is also necessary so that the Authority can request energy usage data from the IOU during the Quality Assurance review process.

**10092.8(b)(2)(F)(ii)(a):** This provision is necessary to identify the location of the Eligible Property and match it to the submitted utility account details and bills for IOU service verification purposes.

**10092.8(b)(2)(F)(ii)(b):** This provision is necessary to understand what customers and communities are utilizing the Program so that the Authority can tailor its marketing, education, and outreach efforts.

**10092.8(b)(2)(F)(iii):** This provision is necessary to detail each Energy Saving Measure installed at the Eligible Property to confirm that it conforms to Program regulations and in order to get a detailed and qualitative description for Quality Assurance and Program evaluation purposes.

**10092.8(b)(2)(F)(iv):** This provision is necessary to verify that the fuel source for Energy Saving Measures installed via either the IOU Custom Measure Method or the Professionally Certified Measure Method matches the fuel service billed by an IOU at the Eligible Property to ensure that the installation conforms to the Decision. This provision is also necessary to provide additional insight into whether different Energy Saving Measure qualification methods attract one fuel source opposed to another.

**10092.8(b)(2)(F)(v):** This provision is necessary to identify the Energy Professional that is providing the energy savings estimate and certification for measures installed via the Professionally Certified Measure Method and to verify that it has the necessary qualifications to act as an Energy Professional.

**10092.8(b)(2)(F)(vi)(a):** This provision is necessary because the total cost of all Energy Saving Measures is needed to calculate the Loss Reserve Contribution for the Eligible Financing Agreement and for Program evaluation purposes.

**10092.8(b)(2)(F)(vi)(b):** This provision is necessary to detail the improvements legally and practically necessary to complete the installation of Energy Saving Measures because the

Program includes their costs in the total costs of Energy Saving Measures when calculating the Loss Reserve Contribution for the Eligible Financing Agreement.

**10092.8(b)(2)(F)(vi)(c):** This provision is necessary because these costs may be included in the Claim-Eligible Financed Amount, and thus the Loss Reserve Contribution for the Eligible Financing Agreement, up to a defined amount. This data is also necessary because it provides additional insight into how many Projects include Non-ESMs and the effect of including them on the quantity and amount of Eligible Financing Agreements enrolled in the Program.

**10092.8(b)(2)(F)(vi)(d):** This provision is necessary to ensure that work was performed according to all applicable laws, regulations, and building codes and that a permitting agency has approved the installation.

**10092.8(b)(2)(F)(vi)(e):** This provision is necessary to track the use of rebates and incentives in combination with financing when installing Energy Efficiency upgrades. This data is necessary to evaluate the effectiveness of the Program both when it is utilized independently and in combination with other programs or incentives.

**10092.8(b)(2)(F)(vi)(f):** This provision is necessary to establish the deadline for the contractor installing the Scope of Work to become enrolled as a Participating Contractor and to determine the Eligible Financing Agreement submittal deadline for the Finance Provider Entity.

**10092.8(b)(2)(F)(vii):** This provision is necessary for the Authority to verify and report indicated rebates and incentives to the appropriate IOU/REN/CCA, if applicable.

**10092.8(b)(3)(A):** This provision is necessary to obtain an affirmative statement from the Participating Contractor attesting that all stated work has been installed. This is necessary to reinforce compliance with Program requirements, which will help protect ratepayer funds by ensuring that the Loss Reserve Contribution is being used for Energy Efficiency upgrades and in accordance with the Decision. This document is also necessary to obtain certification that the Participating Contractor is properly licensed, performed all work in compliance with applicable laws and building codes, and complied with all other Program requirements.

**10092.8(b)(3)(B):** This provision is necessary to obtain an affirmative statement from the Participating Project Developer that attests to the veracity of all information provided to the Authority for the Project by itself and all Participating Contractors. This is necessary to reinforce compliance with Program requirements, which will help protect ratepayer funds by ensuring that the Loss Reserve Contribution is being used for Energy Efficiency upgrades and in accordance with the Decision.

**10092.8(b)(3)(C):** This provision is necessary to obtain an affirmative statement from the Finance Provider Entity that attests to the veracity of all information provided to the Authority for the Eligible Financing Agreement. This is necessary to reinforce compliance with Program requirements, which will help protect ratepayer funds by ensuring that the Loss Reserve Contribution is being used for Energy Efficiency upgrades and in accordance with the Decision.

**10092.8(b)(3)(D):** This provision is necessary to obtain a legally binding document from the Eligible Commercial Financing Customer that all work on the Project was completed and done so to its satisfaction, and that all funds were used to pay for the Project. This is necessary as a consumer protection standard to reinforce compliance with Program requirements, which will help protect ratepayer funds by ensuring that the Loss Reserve Contribution is being used for Energy Efficiency upgrades and in accordance with the Decision. This provision is also necessary to hold the Authority and IOUs harmless for the work performed, certify that the Eligible Commercial Financing Customer has complied with all other Program requirements, and agrees to the Program’s post-project verifications.

**10092.8(b)(3)(E):** This provision is necessary to obtain from the Energy Professional an affirmation that each Energy Saving Measure qualifying through the Professionally Certified Measure Method will save energy, and that the energy savings estimates are true and correct to the best of the its knowledge. This is necessary to protect ratepayer funds by ensuring that the Loss Reserve Contribution is being used for Energy Efficiency upgrades and in accordance with the Decision.

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

The Authority relied on experts from both the public and private sectors, and rules and regulations for similar programs in California and other states to develop the definitions used in this section. In addition, the Authority relied on direct discussions with current and former staff from other states or programs with similar programs. The eligibility criteria, as defined in this regulation, were established in consultation with the California Public Utilities Commission, investor owned utilities staff, and other stakeholders. The Authority relied upon the Decision and the following related CPUC documents (subsequently referred to collectively throughout this document as the “Proceeding”) in proposing the adoption of this regulation:

- Decision 13-09-044, Decision Implementing 2013-14 Energy Efficiency Financing Pilot Programs (the “Decision”), issued September 20, 2013
- 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, issued September 11, 2014
- Administrative Law Judge’s Ruling regarding Changes to Decision 13-09-044, issued July 23, 2015
- Assigned Commissioner’s Ruling Extending Pilot Programs, issued August 25, 2014
- Decision 15-06-008 Modifying Decision 13-09-044, Issued June 11, 2015
- Administrative Law Judge’s Ruling Requesting Comments on Harcourt Brown & Carey Revised Recommendation Regarding Energy Efficiency Equipment Lease financing, issued July 23, 2015
- Decision 15-12-002, Modifying Decision 13-09-044, Issued December 3, 2015
- Decision 17-03-026, Decision Addressing Energy Efficiency Financing Pilot Programs Originally Ordered in Decision 13-09-044, Issued March 23, 2017
- Resolution E-4900, Adopts metrics as tools to contribute to the determination of the long-term viability of energy efficiency finance pilots, December 14, 2017

The Authority relied upon the following documents and studies (subsequently referred to

collectively throughout this document as the “Studies”) in proposing the adoption of this regulation:

- Energy Efficiency Financing Implementation Primer (DOE SEE Action, January 2014)
- Financing Energy Improvements on Utility Bills (DOE SEE Action, May 2014)
- Energy Efficiency Finance Programs-Use Case Analysis (DOE SEE Action, July 2014)
- California Energy Efficiency Finance Data Working Group Final Report (California Energy Efficiency Finance Data Working Group, December 2013)
- Getting the Biggest Bang for the Buck - Exploring the Rationales and Design Options for Energy Efficiency Financing Programs (LBNL, December 2013)
- Using Financing to Scale Up Energy Efficiency (DOE SEE Action, July 2013)
- Recommendations for Energy Efficiency Finance Pilot Programs (Harcourt Brown & Carey, October 2012)
- Interactions Between Energy Efficiency Programs Funded Under the Recovery Act and Utility funded Energy Efficiency Programs (LBNL, March 2011)
- PG&E Energy Upgrade California 2013-2014 Home Upgrade Participant Handbook, version 4.2, July 2, 2014
- Opinion Dynamics and Dunsky Energy Consulting, Final CPUC REEL Pilot Impact Evaluation Considerations, December 29, 2017
- Transforming Small Business Participating in Energy Efficiency: Driving Energy Savings with a Progressive Approach to Small Business Direct Install Program, (Nexant, 2013)
- Big Opportunities for Small Business: Successful Practices of Utility Small Commercial Energy Efficiency Program (American Council For an Energy-Efficiency Economy, November 2016)

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, or Participating Contractors. During the emergency regulation rulemaking process the Authority conducted extensive stakeholder engagement and research in the pre-rulemaking process, undertook extensive internal deliberation, and learned lessons from early Program implementation; significant alternatives considered are discussed below:

**10092.8(a)(2):** The Authority considered both more and less time to submit an Eligible Financing Agreement for enrollment, but these other options were rejected upon the determination that 90 calendar days is a reasonable balance between providing enough time for a Finance Provider Entity to compile the necessary data, documents, and certifications for a complete submission and the Authority’s need to administer the Program and account for the demand for credit enhancement funds.

**10092.8(a)(3):** The Authority considered both more and fewer days to enroll or deny an Eligible Financing Agreement, but these other options were rejected upon the determination that 10

business days is a reasonable balance between providing sufficient time for the Authority's due diligence and providing responsive service to Finance Provider Entities.

**10092.8(b)(2)(D)(iv)(b):** The Authority considered excluding the requirement for the Finance Provider Entity to disclose the amount of the interest rate bought down by the contractor but rejected the option because the information informs the Authority of whether interest rate buy downs are occurring and whether they are necessary for certain projects to be cost effective. It assists the Authority in assessing the Program impact.

**10092.8(b)(2)(E)(i):** The Authority considered excluding the requirement for the Eligible Project Developer or Finance Provider Entity to disclose a description and cost of Non-ESMs installed on Project, and the CSLB number for the non-enrolled contractor installing Non-ESMs, but rejected that option because the information informs the Authority of the types and cost of Non-ESMs installed on the project so that they can be used to calculate the Claim-Eligible Financed Amount and that the contractor installing the measures was licensed by the state of California.

**10092.8(b)(2)(E)(ii):** The Authority considered excluding the requirement for the Eligible Project Developer or Finance Provider Entity to disclose a description and cost of Distributed Generation on the Project, and the CSLB number of the contractor company that installed Distributed Generation, but rejected that option because the information informs the Authority of how Distributed Generation affects Project size and scope and whether Distributed Generation affects a customer's decision to proceed with a Project and that the contractor installing the measures was licensed by the state of California. This information will strengthen the Authority's assessment of Program impact and industry trends.

6. Alternatives to the Proposed Regulation Action that Would Lesson 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 efficiency improvements for their businesses.

## SECTION 10092.9. CREDIT ENHANCEMENT

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

The creation of a credit enhancement offered to Finance Provider Entities is a cornerstone of the pilot programs established by the Decision. The credit enhancement, in the form of a Loss Reserve Contribution or “insurance”, assists Finance Provider Entities to expand their underwriting terms and take more risk. Attracting more financings to the Program is essential to achieving the Decision’s goal of “opening financing to more California energy customers than ever before.” However, the Decision did not specify the structure of credit enhancements recommended to incentivize financing in support of commercial Energy Efficiency improvements. This section describes how the credit enhancement may be established, contributed to, and rebalanced.

### 2. Specific Purpose of the Regulation.

**10092.9(a):** The purpose of this provision is to describe the operational elements of the Loss Reserve Accounts, the process through which they are established, that they are to be held by the Program Trustee for the benefit of each Finance Provider Entity, and how claims are to be paid.

**10092.9(b):** The purpose of this provision is to establish that up to three Loss Reserve Accounts may be created per Finance Provider Entity at the Loss Reserve Account Representative’s request.

**10092.9(c):** The purpose of this provision is to describe when and how the Authority will contribute to a Finance Provider Entity’s Loss Reserve Account.

**10092.9(c)(1):** The purpose of this provision is to establish that the Authority shall transfer a Loss Reserve Contribution from the Program Holding Account to a Finance Provider Entity’s Loss Reserve Account for each Enrolled Financing Agreement.

**10092.9(c)(2):** The purpose of this provision is to describe the methodology for calculating the Loss Reserve Contribution for each Enrolled Financing Agreement.

**10092.9(c)(3):** This purpose of this provision is to provide a process for the Finance Provider Entity to return Loss Reserve Contribution funds to the Program Holding Account in the event that it decides not to fund an Eligible Financing Agreement for which a Loss Reserve Contribution has already been transferred to the Finance Provider Entity’s Loss Reserve Account.

**10092.9(c)(4):** This purpose of this provision is to establish a process for the Loss Reserve Contribution funds to be returned to the Program Holding Account in the event that the Finance Provider Entity decides to fund less than the Claim-Eligible Financing Amount reported at the time of submittal for an Enrolled Financing Agreement for which a Loss Reserve Contribution has already been transferred to the Finance Provider Entity’s Loss Reserve Account.

**10092.9(d):** The purpose of this provision is to establish the date on which an annual rebalance of the Finance Provider Entity's Loss Reserve account will occur and stipulates that the Authority shall transfer funds from a Finance Provider Entity's Loss Reserve Account to the Program Holding Account according to the methodology described in Section 10092.9(e) of this Article.

**10092.9(e):** The purpose of this provision is to establish the methodology for the annual rebalance of a Finance Provider Entity's Loss Reserve Account(s), including how the rebalance will differ depending on whether the Finance Provider Entity has made one or more claims in the previous fiscal year and those that have not.

### 3. Necessity.

This section is necessary to establish the administrative process for Loss Reserve Accounts for the benefit of the Finance Provider Entity, as each Eligible Financing Agreement is enrolled in the Program. This section is also necessary to provide the methodology for the calculation of the Loss Reserve Contribution, and the annual rebalance of the Loss Reserve Account funds so that there is certainty, common understanding, and clarity among all Finance Provider Applicants contemplating enrolling in the Program.

**10092.9(a):** This provision is necessary to establish that the Authority will establish Loss Reserve Account(s) at the Trustee for each Finance Provider Entity, and to describe the purpose of the account(s) so that there is common understanding among finance companies contemplating enrolling in the Program and those that have already enrolled. It is necessary to establish the accounts at the Trustee to establish a standard process to implement the Program.

**10092.9(b):** This provision is necessary to establish that each Finance Provider Entity may have up to three Loss Reserve Accounts to hold its Loss Reserve Contributions in order to provide flexibility to Finance Provider Entities that desire to segregate pools of credit enhancement funds. The Authority determined it was necessary to allow three accounts to accommodate various business models without incurring too great a financial or administrative burden. Fewer than three accounts would be too few to accommodate the needs of some Finance Provider Entities while more than three Loss Reserve Accounts would be overly cumbersome to administer and costly for the Authority to maintain.

**10092.9(c)(1):** This provision is necessary to establish the Authority has the ability to direct the Trustee to transfer a Loss Reserve Contribution to the Finance Provider Entity's Loss Reserve Account for each Enrolled Financing Agreement. This provision is also necessary to provide prospective finance companies and Finance Provider Entities certainty in knowing that a Loss Reserve Contribution will be directed to the Loss Reserve Account for each Enrolled Financing Agreement.

**10092.9(c)(2):** This provision is necessary to provide the methodology for calculating the Loss Reserve Contribution for each Enrolled Financing Agreement, which provides certainty, and common understanding for both prospective finance companies and Finance Provider Entities.



**10092.9(c)(3):** This provision is necessary to inform the Finance Provider Entity of the process for recovering funds in the event the Eligible Financing Agreement is not funded and to provide the Authority the authority to recapture funds transferred to the Loss Reserve Account. Recapturing funds transferred to the Loss Reserve Account if an Eligible Financing Agreement is not funded is necessary to protect ratepayer funds by ensuring that credit enhancement funds are not expended in the event a financing agreement ultimately does not fund.

**10092.9(c)(4):** This provision is necessary to inform the Finance Provider Entity of the process for recovering funds in the event the Finance Provider Entity is going to fund less than the originally reported Claim-Eligible Financing Amount on an Eligible Financing Agreement and to grant the Authority the authority to recapture the excess funds transferred to the Loss Reserve Account. Recapturing excess funds transferred to the Loss Reserve Account if less than the originally reported Claim-Eligible Financing Amount on an Eligible Financing Agreement is necessary to protect ratepayer funds by ensuring that credit enhancement funds are used according to Program regulations and no excess ratepayer funds are transferred the Loss Reserve Account than necessary.

**10092.9(d):** This provision is necessary to provide the schedule for the rebalancing of each Finance Provider Entity Loss Reserve Account. Rebalancing is necessary to prevent excess funds in a Finance Provider Entity's Loss Reserve and to recapture funds so that they can be used to credit enhance future Enrolled Financing Agreements. This provision is also necessary to remain consistent with the intent of the Decision, which requires a revolving loss reserve fund.

**10092.9(e):** This provision is necessary to provide the methodology that the Authority will utilize when conducting the Annual Rebalance. This provision is necessary so that prospective finance companies, enrolled Finance Provider Entities, and the public are aware of how and at what frequency Loss Reserve Account funds will be recaptured.

**10092.9(e)(1):** This provision is necessary to ensure that credit enhancements revolve to meet the requirements of the Decision, and to encourage Finance Provider Entities to continue to enroll new financings to build up their Loss Reserve Account funds.

**10092.9(e)(2):** This provision is necessary to ensure that credit enhancements revolve to meet the requirements of the Decision, while fulfilling the Program's obligation to Finance Provider Entities to allow them to draw on the Loss Reserve Contribution funds made available to them as incentive to extend or improve credit terms for Energy Efficiency projects under the Program.

**10092.9(e)(3):** This provision is necessary to allow the Finance Provider Entity to continue to accumulate funds in their Loss Reserve Account, so that if they experience a default they will have funds to cover the claim. This provision is necessary so that the arbitrariness of when a default occurs has less impact on the overall Loss Reserve Account balance. The Authority does not want Finance Provider Entities to rush to charge off financings because they fear the annual rebalance approaching.

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

The Authority relied on experts from both the public and private sectors, and rules and regulations for similar programs in California and other states to develop the definitions used in this section. In addition, the Authority relied on direct discussions with current and former staff from other states or programs with similar programs. The eligibility criteria, as defined in this regulation, were established in consultation with the California Public Utilities Commission, investor owned utilities staff, and other stakeholders. The Authority relied upon the Decision and the following related CPUC documents (subsequently referred to collectively throughout this document as the “Proceeding”) in proposing the adoption of this regulation:

- Decision 13-09-044, Decision Implementing 2013-14 Energy Efficiency Financing Pilot Programs (the “Decision”), issued September 20, 2013
- 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, issued September 11, 2014
- Administrative Law Judge’s Ruling regarding Changes to Decision 13-09-044, issued July 23, 2015
- Assigned Commissioner’s Ruling Extending Pilot Programs, issued August 25, 2014
- Decision 15-06-008 Modifying Decision 13-09-044, Issued June 11, 2015
- Administrative Law Judge’s Ruling Requesting Comments on Harcourt Brown & Carey Revised Recommendation Regarding Energy Efficiency Equipment Lease financing, issued July 23, 2015
- Decision 15-12-002, Modifying Decision 13-09-044, Issued December 3, 2015
- Decision 17-03-026, Decision Addressing Energy Efficiency Financing Pilot Programs Originally Ordered in Decision 13-09-044, Issued March 23, 2017
- Resolution E-4900, Adopts metrics as tools to contribute to the determination of the long-term viability of energy efficiency finance pilots, December 14, 2017

The Authority relied upon the following documents and studies (subsequently referred to collectively throughout this document as the “Studies”) in proposing the adoption of this regulation:

- Energy Efficiency Financing Implementation Primer (DOE SEE Action, January 2014)
- Financing Energy Improvements on Utility Bills (DOE SEE Action, May 2014)
- Energy Efficiency Finance Programs-Use Case Analysis (DOE SEE Action, July 2014)
- California Energy Efficiency Finance Data Working Group Final Report (California Energy Efficiency Finance Data Working Group, December 2013)
- Getting the Biggest Bang for the Buck - Exploring the Rationales and Design Options for Energy Efficiency Financing Programs (LBNL, December 2013)
- Using Financing to Scale Up Energy Efficiency (DOE SEE Action, July 2013)
- Recommendations for Energy Efficiency Finance Pilot Programs (Harcourt Brown & Carey, October 2012)
- Interactions Between Energy Efficiency Programs Funded Under the Recovery Act and Utility funded Energy Efficiency Programs (LBNL, March 2011)
- PG&E Energy Upgrade California 2013-2014 Home Upgrade Participant Handbook, version 4.2, July 2, 2014

- Opinion Dynamics and Dunskey Energy Consulting, Final CPUC REEL Pilot Impact Evaluation Considerations, December 29, 2017
  - Transforming Small Business Participating in Energy Efficiency: Driving Energy Savings with a Progressive Approach to Small Business Direct Install Program, (Nexant, 2013)
  - Big Opportunities for Small Business: Successful Practices of Utility Small Commercial Energy Efficiency Program (American Council For an Energy-Efficiency Economy, November 2016)
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, or Participating Contractors. During the emergency regulation rulemaking process the Authority conducted extensive stakeholder engagement and research in the pre-rulemaking process, undertook extensive internal deliberation, and learned lessons from early Program implementation; significant alternatives considered are discussed below:

**10092.9(b):** The Authority considered both more and fewer Loss Reserve Accounts which can be established per Finance Provider Entity, but these other options were rejected upon the determination that three accounts is a reasonable balance between providing flexibility to Finance Provider Entity's that may wish to segregate Loss Reserve Account funds into different tranches and not creating too great an administrative burden on the Authority by requiring it to establish and administer too many accounts.

**10092.9(c)(2):** The Authority considered a variety of rubrics for calculating the Loss Reserve Contribution for each Enrolled Financing Agreement, but the other options were rejected because funding 20% of the first \$50,000 and 5% of the next \$950,000 incents Finance Provider Entities to finance smaller (\$50,000 and less) Projects - an underserved niche in the energy efficiency market, and it creates a simple and straightforward calculation, while mitigating risk to Finance Provider Entities to encourage engagement with the energy efficiency market – a primary goal of the Program.

6. Alternatives to the Proposed Regulation Action that Would Lesson 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 as a result of the increased economic activity and energy conservation as a result of Financing Customer's investment in energy efficiency improvements for their businesses.

## SECTION 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 ratepayer Energy Efficiency funds for credit enhancements such as loss reserves 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 Provider Entities participating in the Program to cover losses incurred from defaults and nonpayment. This section is necessary to establish the terms for such claims.

2. Specific Purpose of the Regulation.

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, and the Finance Provider Entity's ultimate charge-off of some, or all, of its outstanding principal.

**10092.10(a):** The purpose of this provision is to stipulate the conditions that must be met before a Finance Provider Entity may submit a claim for an Enrolled Financing Agreement.

**10092.10(a)(1):** The purpose of this provision is to set a maximum term of ten years for a financing to be eligible for a claim.

**10092.10(a)(2):** The purpose of this provision is to require that an Eligible Commercial Financing Customer has defaulted on its Enrolled Financing Agreement and the Finance Provider Entity has charged off some or all of the Claim-Eligible Financed Amount before a claim may be submitted.

**10092.10(a)(3):** The purpose of this provision is to require the Finance Provider Entity to take reasonable steps in accordance with industry standards to recover defaulted balances on Enrolled Financing Agreements from the Eligible Commercial Financing Customer before they may submit a claim.

**10092.10(a)(4):** The purpose of this provision is to require that claims only be provided to Finance Provider Entities that are compliant with Program regulations, including but not limited to reporting requirements.

**10092.10(b):** The purpose of this provision is to establish a limit of 90% of the financing amount that may be claimed by the Finance Provider Entity in the event of a charge-off.

**10092.10(c):** The purpose of this provision is to set the limit on the amount that the Finance Provider Entity will receive at no more than 100% of the Claim-Eligible Charge-Off Amount, not including any interest, net of any recovery procured.

**10092.10(d):** The purpose of this provision is to allow the Finance Provider Entity's Loss Reserve Account Representative to request that future Loss Reserve Contributions be paid out as a part of a claim, until the end of the next annual rebalancing, if available funds in its Loss Reserve Account are insufficient to cover an approved claim at the time of submission.

**10092.10(e):** The purpose of this provision is to stipulate the requirements and a timing deadline for a claim application to be complete and submitted to the Authority.

**10092.10(e)(1):** The purpose of this provision is to specify the data required on a complete claim application, including the Total Charge-Off Amount and claim amount requested, whether or not enforcement proceedings have commenced, Trustee account numbers from which to pay the claim, and the payee.

**10092.10(e)(2):** The purpose of this provision is to require the Finance Provider Entity to provide the status of enforcement proceedings on secured Enrolled Financing Agreement for a claim application to be complete.

**10092.10(e)(3-5):** The purpose of these provisions is to specify the certifications required on a complete claim application.

**10092.10(e)(6):** The purpose of this provision is to confirm the claim application is signed by the Loss Reserve Account Representative authorized to file a claim.

**10092.10(f):** The purpose of this provision is to detail the process and 30-day timeline for the Authority to review and make an approval determination on a claim application. It also specifies conditions under which the Executive Director may reject a claim.

**10092.10(g):** The purpose of this provision is to establish the process and timeline on which funds will be disbursed to a finance Provider Entity's Loss Reserve Account for an approved claim.

**10092.10(h):** The purpose of this provision is to allow funds for an approved claim to be disbursed to a third party, and to specify the requirements for such disbursement to occur.

**10092.10(i):** The purpose of this provision is to require that the Finance Provider Entity to repay to the Authority any funds recovered from an Eligible Small Business Financing Customer that exceed the amount needed to fully cover the Claim-Eligible Charge-Off Amount for the Enrolled Financing Agreement.

### 3. Necessity.

This section is necessary to establish processes and procedures for appropriate disbursement of the ratepayer dollars from Loss Reserve Accounts. The Program utilizes ratepayer funds as credit enhancements to incentivize finance companies to extend or improve credit terms that stimulate utility customers to make investments in Energy Efficiency retrofits. For the credit enhancements to have the desired effect, the funds in Loss Reserve Accounts must be accessible to Finance

Provider Entities when they incur a loss from a charge-off of defaulted Enrolled Financing Agreements.

**10092.10(a)(1):** This provision is necessary to establish a date after which a Finance Provider Entity may no longer submit a claim. Based on industry and stakeholder feedback, energy efficiency financing products typically do not exceed payback periods of five years. However, certain Finance Provider Entities have extended their maximum term for Eligible Financing Agreements to ten years because of the Program's credit enhancement. Ten years was chosen to allow Finance Provider Entities to extend payment terms while having the credit enhancement cover those financing agreements. Ten years is also consistent with the typical useful lifespan of many Energy Efficiency measures.

**10092.10(a)(2-3):** These provisions are necessary to prevent Finance Provider Entities from prematurely submitting claims or treating the credit enhancement as a primary means of recovery instead of a resource of last resort. This provision is further necessary to prevent unnecessary utilization of ratepayer funds from Loss Reserve Accounts before other means of recovery, in line with industry standards and consistent with the Finance Provider Entity's usual methods, are exhausted.

**10092.10(a)(4):** This provision is necessary to ensure the accuracy of payouts for claims submitted to the Authority as a protection of ratepayer funds. Compliance with all Program regulations is necessary to ensure the Enrolled Financing Agreement is in good standing under the Program and eligible for claim payment. The reporting requirements, in particular, are necessary to verify the repayment status of the financing as charged off, the Claim-Eligible Charge-Off Amount, how much was able to be recovered from the Eligible Commercial Financing Customer through liquidations and personal guarantees, and what losses have been incurred as a result of the charge-off.

**10092.10(b):** This provision is necessary to make available to a Finance Provider Entity a meaningful and substantial reimbursement amount of its Claim-Eligible Charge-Off Amount in cases of unsuccessful recovery efforts or an unsecured financing, while ensuring that the Finance Provider Entity remains incentivized to make recovery efforts to recoup losses fully. The amount of 90% is utilized as a maximum amount available for recovery so that the Finance Provider Entity has a stake in the financing agreement and to provide it with adequate incentive to originate and service financing agreements according to industry best practices while entering a new market.

**10092.10(c):** This provision is necessary to allow Finance Provider Entities to fully recoup losses from defaulted financings, without utilizing ratepayer funds to compensate them for the profit of interest. It is also necessary to limit exposure of ratepayer funds to only the Loss Reserve Contributions for the Finance Provider Entity's Enrolled Financing Agreements.

**10092.10(d):** This provision is necessary to enable a Finance Provider Entity to continue enrolling new Eligible Financing Agreements to build up a sufficient balance in its Loss Reserve Account so that it can recoup losses when Enrolled Finance Agreements may default. Allowing the Finance Provider Entity to apply future Loss Reserve Contributions to recoup losses is

necessary to mitigate risk to a Finance Provider Entity and to encourage broad participation in the Program. This provision is also necessary to protect ratepayer funds and ease the Authority's administrative burden by only limiting payment on a claim to the balance of a Loss Reserve Account or to future Loss Reserve Account Contributions until the next annual rebalance.

**10092.10(e):** This provision is necessary to protect ratepayer funds from unauthorized, inaccurate, or fraudulent claims by a Finance Provider Entity by requiring claim applications to be compliant with Program regulations including reporting requirements that form the basis for verifying repayment status, Claim-Eligible Charge-Off Amount, and losses net of recoveries, as well as by only accepting claim applications submitted by the Loss Reserve Account Representative. The 180-calendar day limit is necessary to give a Finance Provider Entity ample time to exhaust available means of recovery in line with industry standards and consistent with its usual methods before charging off a defaulted Enrolled Financing Agreement, thus safeguarding ratepayer funds against overutilization.

**10092.10(e)(1)(A):** This provision is necessary for the Authority to process a claim, compare the amount requested with the Authority's internal calculations, and determine the correct payment amount.

**10092.10(e)(1)(B):** This provision is necessary to verify that the Finance Provider Entity is following their normal business practices in attempting to recover the funds to protect ratepayer funds in the Loss Reserve Account from unnecessary, premature, or oversized claims.

**10092.10(e)(1)(C):** This provision is necessary to confirm from which Loss Reserve Account the claim should be paid, particularly if the Finance Provider Entity has more than one Loss Reserve Account.

**10092.10(e)(1)(D):** This provision is necessary to confirm the payee to whom the claim will be paid if it is approved by the Authority. This is necessary to safeguard ratepayer funds from being paid to the wrong account or wrong entity.

**10092.10(e)(2):** This provision is necessary to verify that the Finance Provider Entity is attempting to recover the funds through enforcement proceedings seeking recovery of secured equipment to protect ratepayer funds from unnecessary or oversized claims against the Loss Reserve Accounts.

**10092.10(e)(3):** This provision is necessary to ensure that the Finance Provider Entity affirmatively certifies that it, and the Enrolled Financing Agreement, have met all the required conditions for submitting a claim, and that the Finance Provider Entity is following its normal business practices for taking action to recover funds in order to protect ratepayer funds from unnecessary and premature claims.

**10092.10(e)(4):** This provision is necessary to ensure the Authority will receive information about new recoveries. This is necessary to protect ratepayer dollars by ensuring that Finance Provider Entity does receive more from its Loss Reserve Account than needed to be made whole



for any losses incurred as a result of a charge-off, and that the Authority is recompensed if it recovery does occur.

**10092.10(e)(5):** This provision is necessary to ensure the veracity of the claim application.

**10092.10(e)(6):** This provision is necessary to ensure that only an authorized and approved individual representing the Finance Provider Entity's Loss Reserve Account Representative may file a claim.

**10092.10(f):** This provision is necessary to give the Authority sufficient time to review and process a claim application while preventing undue delay for the Finance Provider Entity. Thirty calendar days was determined to be enough time to review and process a claim application without providing undue delay to the Finance Provider Entity. This provision is also necessary to grant the Executive Director authority to deny a claim to a Finance Provider Entity that is noncompliant, acted fraudulently or in bad faith, or failed to honor its obligations, ensuring appropriate use of funds. This provision is also necessary to ensure the Authority has enough time to request, receive, and review any pertinent information that could influence their decision before approval of a claim.

**10092.10(g):** This provision is necessary to establish the process for payment of claims once approved by the Authority. Five business days was chosen to align with the Authority's experience operating other programs, and is consistent with industry standards.

**10092.10(h):** This provision is necessary to provide flexibility for the industry practice of transferring, selling, or assigning debt to a third party. It is also necessary to ensure that a claim is paid to the correct entity in the event a Finance Provider Entity has sold or assigned the repayment stream for an Enrolled Financing Agreement. Requiring the request be made in writing is necessary to ensure the Authority has a record of the request.

**10092.10(i):** This provision is necessary to protect ratepayer dollars by ensuring that Finance Provider Entities are not recouping more from the Loss Reserve Account than they need to be made whole for any losses incurred as a result of charge-offs.

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

The Authority relied on experts from both the public and private sectors, and rules and regulations for similar programs in California and other states to develop the definitions used in this section. In addition, the Authority relied on direct discussions with current and former staff from other states or programs with similar programs. The eligibility criteria, as defined in this regulation, were established in consultation with the California Public Utilities Commission, investor owned utilities staff, and other stakeholders. The Authority relied upon the Decision and the following related CPUC documents (subsequently referred to collectively throughout this document as the "Proceeding") in proposing the adoption of this regulation:

- Decision 13-09-044, Decision Implementing 2013-14 Energy Efficiency Financing Pilot Programs (the "Decision"), issued September 20, 2013

- 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, issued September 11, 2014
- Administrative Law Judge's Ruling regarding Changes to Decision 13-09-044, issued July 23, 2015
- Assigned Commissioner's Ruling Extending Pilot Programs, issued August 25, 2014
- Decision 15-06-008 Modifying Decision 13-09-044, Issued June 11, 2015
- Administrative Law Judge's Ruling Requesting Comments on Harcourt Brown & Carey Revised Recommendation Regarding Energy Efficiency Equipment Lease financing, issued July 23, 2015
- Decision 15-12-002, Modifying Decision 13-09-044, Issued December 3, 2015
- Decision 17-03-026, Decision Addressing Energy Efficiency Financing Pilot Programs Originally Ordered in Decision 13-09-044, Issued March 23, 2017
- Resolution E-4900, Adopts metrics as tools to contribute to the determination of the long-term viability of energy efficiency finance pilots, December 14, 2017

The Authority relied upon the following documents and studies (subsequently referred to collectively throughout this document as the "Studies") in proposing the adoption of this regulation:

- Energy Efficiency Financing Implementation Primer (DOE SEE Action, January 2014)
- Financing Energy Improvements on Utility Bills (DOE SEE Action, May 2014)
- Energy Efficiency Finance Programs-Use Case Analysis (DOE SEE Action, July 2014)
- California Energy Efficiency Finance Data Working Group Final Report (California Energy Efficiency Finance Data Working Group, December 2013)
- Getting the Biggest Bang for the Buck - Exploring the Rationales and Design Options for Energy Efficiency Financing Programs (LBNL, December 2013)
- Using Financing to Scale Up Energy Efficiency (DOE SEE Action, July 2013)
- Recommendations for Energy Efficiency Finance Pilot Programs (Harcourt Brown & Carey, October 2012)
- Interactions Between Energy Efficiency Programs Funded Under the Recovery Act and Utility funded Energy Efficiency Programs (LBNL, March 2011)
- PG&E Energy Upgrade California 2013-2014 Home Upgrade Participant Handbook, version 4.2, July 2, 2014
- Opinion Dynamics and Dunsky Energy Consulting, Final CPUC REEL Pilot Impact Evaluation Considerations, December 29, 2017
- Transforming Small Business Participating in Energy Efficiency: Driving Energy Savings with a Progressive Approach to Small Business Direct Install Program, (Nexant, 2013)
- Big Opportunities for Small Business: Successful Practices of Utility Small Commercial Energy Efficiency Program (American Council For an Energy-Efficiency Economy, November 2016)

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, or Participating Contractors. During the emergency regulation rulemaking process the Authority conducted extensive stakeholder engagement and research in the pre-rulemaking process, undertook extensive internal deliberation, and learned lessons from early Program implementation; significant alternatives considered are discussed below:

**10092.10(a):** The Authority considered percentages both greater and smaller than 90% of the Claim-Eligible Charge-Off Amount for claims submitted by a Finance Provider Entity, but these other options were rejected upon the determination a deeper incentive of 90% would better assist in attracting new market actors into the sector.

**10092.10(d):** The Authority considered not allowing a Finance Provider Entity use future contributions to the Loss Reserve Account to pay a current claim but that option was rejected because this provision is necessary to mitigate the additional risk that Finance Provider Entities have early in the Program when there is low activity and their Loss Reserve Account could be too low to accommodate paying a full claim.

**10092.10(e):** The Authority considered both more and fewer days to submit a claim application, but these other options were rejected upon the determination that 180 calendar days from the date of charge-off is a reasonable balance between providing sufficient time for the Finance Provider Entity to undertake their normal collection and recovery procedures, complete the claim application, and submit the application to the Authority and the Authority's need to administer the Program and understand the exposure to credit enhancement funds.

**10092.10(f):** The Authority considered both more and fewer days to review a claim application, but these other options were rejected upon the determination that 30 calendar days is a reasonable balance between providing sufficient time for the Authority's due diligence and providing responsive service to Finance Provider Applicants. Further, the Authority considered both more and fewer days as an extension of time to review a claim, but these other options were rejected upon the determination that 30 calendar days is a reasonable balance between providing sufficient time for the Authority's to perform additional diligence and providing responsive service to Finance Provider Applicants, particularly considering this is the second 30 calendar day period.

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 Customer's investment in energy efficiency improvements for their businesses.

## **SECTION 10092.11. SALE AND TRANSFER OF ENROLLED FINANCING AND TRANSFER PROGRAM RULES**

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

The Decision established goals to attract capital providers and new market participants. In the finance industry, portfolio asset growth often includes the sale of financing to the secondary market. To accommodate various financing structures and business models, the Program accommodates the sale of enrolled financings into the secondary market and requires additional reporting. Details of the transfer of rights and obligations to the secondary market were not contemplated in the Decision.

2. Specific Purpose of the Regulation.

The purpose of this section is to permit the sale, transfer, or assignment of an Enrolled Financing Agreement or the repayments associated with an Enrolled Financing Agreement. This section also permits and establishes requirements for the transfer of Program roles among Affiliate Finance Provider Entities and the Primary Finance Provider Entity when a Finance Provider Entity has more than one entity fulfilling those roles.

**10092.11(a):** The purpose of this provision is to allow the Finance Provider Entity to sell, transfer, or assign one or more Enrolled Financing Agreements or the repayments associated with one or more Enrolled Financing Agreements to a third party, in whole or in part, and requires that the transaction be reported to the Authority as specified in Section 10092.12 of the regulations.

**10092.11(b):** The purpose of this provision is to allow the Primary Finance Provider Entity and Affiliate Finance Provider Entity to transfer the Program roles of Monthly Reporting, Loss Reserve Account Representative, and Financing Submittal between themselves, and requires that the Authority be notified in writing of such transfer. It also establishes that whichever entity performs the Program role of Financing Submittal will become the new Primary Finance Provider Entity.

**10092.11(c):** The purpose of this provision is to require a non-enrolled entity to apply to the Program as a Primary Finance Provider Applicant or Affiliate Finance Provider Applicant and be approved by the Authority for enrollment in the Program before a Finance Provider Entity may transfer any Program roles to it. This provision also restricts a Finance Provider Entity to only one Primary Finance Provider Entity and one Affiliate Finance Provider Entity. It further requires that the new entity enrolling in the Program assume all of the departing Finance Provider Entity's roles.

3. Necessity.

This section is necessary to enable a Finance Provider Entity to transfer, sell, or assign an Enrolled Financing Agreement to a third party. Transferring, selling or assigning a financing

agreement is common in the finance industry and is necessary to encourage a secondary market that expands the Energy Efficiency financing sector and leads to more capital available for Energy Efficiency improvements. It is also necessary to provide flexibility to Finance Provider Entities by allowing them to share Program roles while ensuring that at least one entity fulfills each Program role.

**10092.11(a):** This provision is necessary to permit a Finance Provider Entity to transfer, sell, or assign an Enrolled Financing Agreement to a third party. Some finance companies have a limited pool of capital available to fund financing agreements, and may periodically need to sell some, or all, of their underlying portfolio in order to free capital to for future financings. Allowing Finance Provider Entities to sell, transfer, or assign financing agreements is necessary to encourage a secondary market - the market that will purchase some or all of a portfolio. Allowing such a sale, transfer, or assignment is designed to lead to more financing agreements and private capital available for Energy Efficiency improvements. Written notification is necessary to ensure the Authority has a record of the sale.

**10092.11(b):** This provision is necessary to provide flexibility to Finance Provider Entities by allowing them to transfer Program roles amongst themselves. Transferring Program roles is necessary to make the Program more attractive to those finance companies that would otherwise not want to participate in a Program when Program roles are immutable. This provision is also necessary for the Authority to remain aware of who is performing each Program role, and to ensure that at least one Finance Provider Entity fulfills each role. It is necessary to establish that any transfer of the Financing Submittal role will result in the transfer of the Primary Finance Provider Entity designation, as the Primary Finance Provider Entity must fulfill the Financing Submittal role.

**10092.11(c):** This provision is necessary to provide flexibility to Finance Provider Entities by allowing a Primary Finance Provider Entity or Affiliate Finance Provider Entity to transfer Program roles to a non-enrolled entity as long as that non-enrolled entity applies to the Program and is approved for enrollment by the Authority. This is necessary to protect ratepayer funds by ensuring that all Program roles are at all times performed by an entity that has undergone the application process and is legally bound to the Program rules. This provision is also necessary to limit the Finance Provider Entity to no more than one Primary Finance Provider Entity and one Affiliate Finance Provider Entity at a time. Limiting a Finance Provider Entity to one Primary Finance Provider Entity and one Affiliate Finance Provider Entity at any given time is necessary to prevent confusion among Program participants and to prevent undue administrative burden.

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

The Authority relied on experts from both the public and private sectors, and rules and regulations for similar programs in California and other states to develop the definitions used in this section. In addition, the Authority relied on direct discussions with current and former staff from other states or programs with similar programs. The eligibility criteria, as defined in this regulation, were established in consultation with the California Public Utilities Commission, investor owned utilities staff, and other stakeholders. The Authority relied upon the Decision and

the following related CPUC documents (subsequently referred to collectively throughout this document as the “Proceeding”) in proposing the adoption of this regulation:

- Decision 13-09-044, Decision Implementing 2013-14 Energy Efficiency Financing Pilot Programs (the “Decision”), issued September 20, 2013
- 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, issued September 11, 2014
- Administrative Law Judge’s Ruling regarding Changes to Decision 13-09-044, issued July 23, 2015
- Assigned Commissioner’s Ruling Extending Pilot Programs, issued August 25, 2014
- Decision 15-06-008 Modifying Decision 13-09-044, Issued June 11, 2015
- Administrative Law Judge’s Ruling Requesting Comments on Harcourt Brown & Carey Revised Recommendation Regarding Energy Efficiency Equipment Lease financing, issued July 23, 2015
- Decision 15-12-002, Modifying Decision 13-09-044, Issued December 3, 2015
- Decision 17-03-026, Decision Addressing Energy Efficiency Financing Pilot Programs Originally Ordered in Decision 13-09-044, Issued March 23, 2017
- Resolution E-4900, Adopts metrics as tools to contribute to the determination of the long-term viability of energy efficiency finance pilots, December 14, 2017

The Authority relied upon the following documents and studies (subsequently referred to collectively throughout this document as the “Studies”) in proposing the adoption of this regulation:

- Energy Efficiency Financing Implementation Primer (DOE SEE Action, January 2014)
- Financing Energy Improvements on Utility Bills (DOE SEE Action, May 2014)
- Energy Efficiency Finance Programs-Use Case Analysis (DOE SEE Action, July 2014)
- California Energy Efficiency Finance Data Working Group Final Report (California Energy Efficiency Finance Data Working Group, December 2013)
- Getting the Biggest Bang for the Buck - Exploring the Rationales and Design Options for Energy Efficiency Financing Programs (LBNL, December 2013)
- Using Financing to Scale Up Energy Efficiency (DOE SEE Action, July 2013)
- Recommendations for Energy Efficiency Finance Pilot Programs (Harcourt Brown & Carey, October 2012)
- Interactions Between Energy Efficiency Programs Funded Under the Recovery Act and Utility funded Energy Efficiency Programs (LBNL, March 2011)
- PG&E Energy Upgrade California 2013-2014 Home Upgrade Participant Handbook, version 4.2, July 2, 2014
- Opinion Dynamics and Dunskey Energy Consulting, Final CPUC REEL Pilot Impact Evaluation Considerations, December 29, 2017
- Transforming Small Business Participating in Energy Efficiency: Driving Energy Savings with a Progressive Approach to Small Business Direct Install Program, (Nexant, 2013)
- Big Opportunities for Small Business: Successful Practices of Utility Small Commercial Energy Efficiency Program (American Council For an Energy-Efficiency Economy, November 2016)

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, or Participating Contractors. During the emergency regulation rulemaking process the Authority conducted extensive stakeholder engagement and research in the pre-rulemaking process, undertook extensive internal deliberation, and learned lessons from early Program implementation; significant alternatives considered are discussed below:

**10092.11(a):** The Authority considered not allowing the sale, transfer, or assignment of Enrolled Financing Agreements but rejected that option because it determined doing so could limit participation by certain finance companies, which do not have a permanent source of funds, and could limit the number of financing agreements that a Finance Provider Entity could issue because finance companies occasionally need to liquidate existing financing agreements to secure funding for future financing agreements.

**10092.11(b):** The Authority considered preventing the transfer of roles between the Affiliate Finance Provider Entity and the Primary Finance Provider entity but this option was rejected because the Authority determined that this flexibility makes the Program more attractive to finance companies and would lead to Program growth and improved Program impact and reach.

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 efficiency improvements for their businesses.



## SECTION 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.

### 2. Specific Purpose of the Regulation.

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

**10092.12(a):** The purpose of this provision is to require the Finance Provider Entity to provide the Authority with a monthly report on the status and details of Enrolled Financing Agreements and applications for new Eligible Financing Agreements. It also establishes the date by which the report is due each month.

**10092.12(b):** The purpose of this provision is to specify the data points that must be included in the monthly reports to the Authority.

**10092.12(b)(1):** The purpose of this provision is to indicate the current payment or account status for each Enrolled Financing Agreement.

**10092.12(b)(2):** The purpose of this provision is to indicate any changes to certain financing terms or regularly scheduled payment amount for each Enrolled Financing Agreement.

**10092.12(b)(3):** The purpose of this provision is quantify the outstanding financed amount of each Enrolled Financing Agreement.

**10092.12(b)(4-5):** The purpose of these provisions is to indicate any changes in ownership rights to each Enrolled Financing Agreement, identify the new owner of the debt rights, and quantify the amount sold, transferred, or assigned.

**10092.12(b)(6):** The purpose of this provision is identify the date and amount of any charge-offs, and indicate whether enforcement proceedings have begun against secured collateral or personal guarantees.

**10092.12(b)(7):** The purpose of this provision is to quantify anticipated losses from any charge-offs, as well as indicate whether an acceleration notice has been sent to the Eligible Commercial Financing Customer.

**10092.12(b)(8):** The purpose of this provision is to quantify the amount of any recoveries or proceeds received from charged-off financings.

**10092.12(c):** The purpose of this provision is to end the Finance Provider Entity's monthly reporting obligation for Enrolled Financing Agreements that are paid-off.

**10092.12(d):** The purpose of this provision is to require the Finance Provider Entity to report changes to the monthly payment amount of Savings-Based Payment Agreements annually with the January monthly report.

**10092.12(e):** The purpose of this provision is to require the Finance Provider Entity to include in each monthly report the number of completed applications received and the number approved the previous month.

**10092.12(f)(1):** The purpose of this provision is to require the Finance Provider Entity to submit an annual report identifying any changes to information or certifications from its original Program enrollment application, or indicating that all statements remain materially unchanged.

**10092.12(f)(2):** The purpose of this provision is to require any Finance Provider Entity that is not a Financial Institution to provide written evidence of current licenses and insurance.

**10092.12(g):** The purpose of this provision is to require Finance Provider Entities to inform the Authority in writing within ten business days of any regulatory sanction or cease and desist order it receives.

### 3. Necessity.

This section is necessary to enable the Authority to track and audit repayment performance and sale of financings for all Enrolled Financing Agreements and customer applications received by the Finance Provider Entity. Reporting is necessary to appropriately protect the use of Program funds and monitor and analyze Program impact on repayment success and default rates and the creation of a secondary market for the sale of financings.

**10092.12(a):** This provision is necessary to appropriately protect the use of Program funds and monitor and analyze Program impact on repayment success and default rates and the creation of a secondary market for the sale of financings. Reporting also allows the Authority to monitor the strength of each Finance Provider Entity's portfolio of Enrolled Financing Agreements, and identify patterns in its financing applicants and decisions for the Program. Monthly reporting was chosen to align with the finance industry standard process of producing monthly account status reports and statements. The due date of the 5<sup>th</sup> day of each month was chosen to provide the Finance Provider Entity with an adequate buffer of time to process data from the previous calendar month and submit the complete report to the Authority regardless of which day of the week the previous month ends, except for when an industry-wide bank holiday falls in the first week of the month. This provision is also necessary so the Authority can provide reports to the CPUC as required under the Decision.

**10092.12(b):** This provision is necessary for the Authority to monitor the actions of Enrolled Financing Agreements, Program portfolios, and monitor the associated risk to Loss Reserve Account funds.

**10092.12(b)(1):** This provision is necessary to identify and monitor Enrolled Financing Agreements that fall behind on repayment. The repayment status of Enrolled Financing Agreements also allows the Authority to observe and report on macro trends within the Program, and understand risk to Loss Reserve Account funds.

**10092.12(b)(2):** This provision is necessary for the Authority to monitor changes to Enrolled Financing Agreement payments that indicate whether an Eligible Commercial Financing Customer is experiencing difficulty keeping up with their repayment obligations, and whether or not they are past due. This is necessary for the Authority to understand the risk exposure of the portfolio of Enrolled Financing Agreements. Reporting on the elements in this provision is further necessary in order for the Authority to ensure that the new terms remain compliant with the Program rules and with the terms approved for the Finance Provider Entity under the Program.

**10092.12(b)(3):** This provision is necessary to assess outstanding exposure of ratepayer funds in Loss Reserve Accounts for each Enrolled Financing Agreement.

**10092.12(b)(4-5):** These provisions are necessary to monitor who owns the repayment rights to each Enrolled Financing Agreement, and whether the sale, transfer, or assignment aligns with the intent that the Finance Provider Entity disclosed to the Authority when it was applying for participation in the Program. This provision is necessary to understand and assess the effect the Program has on the secondary market, one of the goals of the Decision. Further, this provision is necessary as an indication of the strength of the Finance Provider Entity's financing portfolio.

**10092.12(b)(6):** This provision is necessary for the Authority to forecast expected upcoming claim amounts, and ensure that Finance Provider Entities exhaust their normal and industry standard enforcement and recovery options before filing a claim to minimize the exposure of ratepayer funds in the Loss Reserve Account.

**10092.12(b)(7):** This provision is necessary for the Authority to forecast possible claim amounts, and assess whether the Finance Provider Entity has started to engage in their normal and industry standard collections processes before escalating to enforcement or pre-maturely charging off the loss.

**10092.12(b)(8):** This provision is necessary for the Finance Provider Entity to report on updates in its efforts to recoup funds on a financing that has a paid charge-off, which should be repaid to the Authority. This is necessary to further safeguard ratepayer funds.

**10092.12(c):** This provision is necessary to focus reporting requirements on Enrolled Financing Agreements currently undergoing repayment. A zero balance in the final report will reflect the Enrolled Financing Agreement as satisfied in full, and therefore will no longer have any new information to report. This is necessary because once an Enrolled Financing Agreement is

satisfied in full, there is no exposure to ratepayer dollars for that particular financing agreement. This is also necessary to reduce the reporting burden on the Finance Provider Entity.

**10092.12(d):** This provision is necessary to measure and verify savings achieved by the Savings-Based Payment Agreement. Since monthly payment amounts fluctuate, the Finance Provider Entity is allowed to report changes annually, but the Authority must remain aware of the Enrolled Financing Customer's monthly obligation, and also able to track the effectiveness of the installed Energy Efficiency measures. This provision is also necessary to ensure that the Savings-Based Payment Agreement complies with Program regulations.

**10092.12(e):** This provision is necessary for the Authority to anticipate Eligible Financing Agreement enrollments in the coming months, as well as track the Finance Provider Entity's application acceptance rate. This information is necessary to better evaluate Program activity and trends.

**10092.12(f)(1):** This provision is necessary to ensure Program compliance and communication between the Finance Provider Entity and the Authority. It is necessary to adequately balance a Finance Provider Entity's need to change or modify its business practices with the Authority's need to ensure accurate information on its partners' activities and practices while enrolled in the Program, to safeguard ratepayer funds and ensure they are being used for the desired purpose. The requirement for an annual update is necessary to proactively update records or address noncompliance. The deadline of January 15<sup>th</sup> was chosen to provide the Finance Provider Entity with an adequate buffer of time to identify changes that occurred in the previous calendar year and submit them or confirm no material changes to the Authority early in the new calendar year.

**10092.12(f)(2):** This provision is necessary to ensure the ongoing qualification and compliance of non-Financial Institution finance companies enrolled in the Program to continue the appropriate use of ratepayer funds.

**10092.12(g):** This provision is necessary to ensure that the Authority is working with appropriate Program partners in good standing with regulators, and is able to take appropriate action to safeguard ratepayer funds, if necessary. It is also necessary to give a Finance Provider Entity an opportunity to explain any sanctions imposed on them, and whether it results in noncompliance, or affects their ability to carry out their obligations under the Program.

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

The Authority relied on experts from both the public and private sectors, and rules and regulations for similar programs in California and other states to develop the definitions used in this section. In addition, the Authority relied on direct discussions with current and former staff from other states or programs with similar programs. The eligibility criteria, as defined in this regulation, were established in consultation with the California Public Utilities Commission, investor owned utilities staff, and other stakeholders. The Authority relied upon the Decision and the following related CPUC documents (subsequently referred to collectively throughout this document as the "Proceeding") in proposing the adoption of this regulation:

- Decision 13-09-044, Decision Implementing 2013-14 Energy Efficiency Financing Pilot Programs (the “Decision”), issued September 20, 2013
- 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, issued September 11, 2014
- Administrative Law Judge’s Ruling regarding Changes to Decision 13-09-044, issued July 23, 2015
- Assigned Commissioner’s Ruling Extending Pilot Programs, issued August 25, 2014
- Decision 15-06-008 Modifying Decision 13-09-044, Issued June 11, 2015
- Administrative Law Judge’s Ruling Requesting Comments on Harcourt Brown & Carey Revised Recommendation Regarding Energy Efficiency Equipment Lease financing, issued July 23, 2015
- Decision 15-12-002, Modifying Decision 13-09-044, Issued December 3, 2015
- Decision 17-03-026, Decision Addressing Energy Efficiency Financing Pilot Programs Originally Ordered in Decision 13-09-044, Issued March 23, 2017
- Resolution E-4900, Adopts metrics as tools to contribute to the determination of the long-term viability of energy efficiency finance pilots, December 14, 2017

The Authority relied upon the following documents and studies (subsequently referred to collectively throughout this document as the “Studies”) in proposing the adoption of this regulation:

- Energy Efficiency Financing Implementation Primer (DOE SEE Action, January 2014)
- Financing Energy Improvements on Utility Bills (DOE SEE Action, May 2014)
- Energy Efficiency Finance Programs-Use Case Analysis (DOE SEE Action, July 2014)
- California Energy Efficiency Finance Data Working Group Final Report (California Energy Efficiency Finance Data Working Group, December 2013)
- Getting the Biggest Bang for the Buck - Exploring the Rationales and Design Options for Energy Efficiency Financing Programs (LBNL, December 2013)
- Using Financing to Scale Up Energy Efficiency (DOE SEE Action, July 2013)
- Recommendations for Energy Efficiency Finance Pilot Programs (Harcourt Brown & Carey, October 2012)
- Interactions Between Energy Efficiency Programs Funded Under the Recovery Act and Utility funded Energy Efficiency Programs (LBNL, March 2011)
- PG&E Energy Upgrade California 2013-2014 Home Upgrade Participant Handbook, version 4.2, July 2, 2014
- Opinion Dynamics and Dunskey Energy Consulting, Final CPUC REEL Pilot Impact Evaluation Considerations, December 29, 2017
- Transforming Small Business Participating in Energy Efficiency: Driving Energy Savings with a Progressive Approach to Small Business Direct Install Program, (Nexant, 2013)
- Big Opportunities for Small Business: Successful Practices of Utility Small Commercial Energy Efficiency Program (American Council For an Energy-Efficiency Economy, November 2016)

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, or Participating Contractors. During the emergency regulation rulemaking process the Authority conducted extensive stakeholder engagement and research in the pre-rulemaking process, undertook extensive internal deliberation, and learned lessons from early Program implementation; significant alternatives considered are discussed below:

**10092.12(a):** The Authority considered both a more and less frequent reporting schedule, but these other options were rejected upon the determination that monthly reporting is necessary to effectively administer the Program, is consistent with other programs administered by the Authority, and aligns with the standard industry practice of sending monthly accounting statements.

**10092.12(d):** The Authority considered both a more and less frequent reporting schedule for Savings-Based Payment Agreements, but these other options were rejected upon the determination that annual reporting is a reasonable balance between providing sufficient time for the Finance Provider Entity to determine monthly payment changes and not creating too great a reporting burden on Finance Provider Entity's, and the administrative burden on the Authority to ensure Enrolled Financing Agreements adhere to Program requirements and to determine the exposure to ratepayer funds.

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 efficiency improvements for their businesses.

## **SECTION 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 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.” 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 purpose of this section is to discuss the Eligible Commercial Financing Customer’s privacy rights relating to information collected through the Program, and obtain approval and acknowledgement that authorizes the Participating Project Developer, Participating Contractors, IOUs, and Finance Provider Entity to share certain information, including information that may be personally identifiable, with the Authority. This was intended in the CPUC Decision, and requires an affirmative release from the borrower. Financing and Energy Efficiency Project performance data may then be made publicly available in an anonymized form and aggregated with information from other Program participants to protect the Eligible Commercial Financing Customer’s privacy while providing needed transparency into the Program’s performance to other government agencies and the public. This section also permits the Authority to contact Eligible Commercial Financing Customers for surveys or site visits to obtain feedback about participation in the Program.

**10092.13(a):** The purpose of this provision is to require the Eligible Commercial Financing Customer to affirm that it has read and acknowledges the Privacy Rights Disclosure Form and that the information will be provided to it in a format specified by the Authority.

**10092.13(b)(1):** The purpose of this provision is to disclose the fact that the Eligible Commercial Financing Customer is a customer of the Finance Provider Entity to the Authority, and indicate the name of the Finance Provider Entity.

**10092.13(b)(2):** The purpose of this provision is to disclose the Eligible Commercial Financing Customer’s financing agreement or account number to the Authority.

**10092.13(b)(3):** The purpose of this provision is to disclose the Eligible Commercial Financing Customer’s name, address, social security number, and contact information to the Authority.

**10092.13(b)(4):** The purpose of this provision is to disclose the Eligible Commercial Financing Customer's financial and credit information used for underwriting their Eligible Financing Agreement to the Authority.

**10092.13(b)(5):** The purpose of this provision is to disclose the amount and repayment terms for the Eligible Commercial Financing Customer's Eligible Financing Agreement to the Authority.

**10092.13(b)(6):** The purpose of this provision is to disclose the Eligible Commercial Financing Customer's Enrolled Financing Agreement repayment history to the Authority.

**10092.13(b)(7):** The purpose of this provision is to disclose the details of the Eligible Commercial Financing Customer's Project funded by an Eligible Financing Agreement to the Authority.

**10092.13(b)(8):** The purpose of this provision is to disclose the details of any utility rebates and/or incentives applied to the Eligible Commercial Financing Customer's Project funded by an Eligible Financing Agreement to the Authority.

**10092.13(b)(9):** The purpose of this provision is to disclose the Eligible Commercial Financing Customer's utility account and service agreement numbers, energy usage, and payment history details to the Authority.

**10092.13(b)(10):** The purpose of this provision is to disclose the data on energy savings created by the Eligible Commercial Financing Customer's Project funded by an Eligible Financing Agreement to the Authority.

**10092.13(c):** The purpose of this provision is to inform Eligible Commercial Financing Customers that their information may be provided to the Authority by the CPUC, an IOU, REN, ESP, or CCA, the Finance Provider Entity, Participating Contractors, or a Participating Project Developer and that the information may be combined with their energy usage data.

**10092.13(d):** The purpose of this provision is to inform the Eligible Commercial Financing Customer that its information may be released to the IOUs, other state agencies, and the federal government pursuant to contracts, interagency agreements, or if required by law and that the information will be released to make both financing and energy efficiency project performance available to the public. Further, the purpose of this provision is to inform the Eligible Commercial Financing Customer that its released information will be anonymized and aggregated to reduce – but may not eliminate – the risk of anyone viewing the data making an association between specific information and the provider of that information and that information that cannot be anonymized and aggregated will not be released to the public.

**10092.13(e):** The purpose of this provision is to inform the Eligible Commercial Financing Customer that the Authority may contact it or may release individual financing customer names, addresses, and phone numbers that will enable the IOUs or the CPUC or individuals acting on their behalf to contact it to conduct site visits and/or surveys.



**10092.13(f):** The purpose of this provision is to inform the Eligible Commercial Financing Customer that the officials responsible for maintaining the information provided about its Eligible Financing Agreement or Enrolled Financing Agreement are Program personnel at the Authority or its contracted agents, and that it has the right of access to records established from the information provided to the agency as it pertains to it.

**10092.13(g):** The purpose of this provision is to inform the person signing the Privacy Rights Disclosure Form that by its affirmation, it represents and warrants that it is a duly authorized representative of the financing customer and that it has the authority to agree to the terms of this Privacy Rights Disclosure on behalf of the financing customer.

### 3. Necessity.

This section is necessary for the Authority to obtain customer permission to collect personally identifiable data relating to them, their Projects, and their Enrolled Financing Agreements. Certain information is necessary to understand which customers are being served by the Program, to protect ratepayer funds by ensuring Program compliance, and to determine the Program's performance and reach to strengthen its impact and usability. It is necessary to comply with reporting requirements contained in the Authority's contracts with the CPUC and the IOUs, and to study the benefits of combining Program benefits with Energy Efficiency rebate and incentive programs. This section is also necessary to follow up with Eligible Commercial Financing Customers for post-Project quality assurance and quality control inspections and customer survey and feedback purposes. This information is required under the Decision, and requiring the borrower to affirmatively release the data is necessary to ensure adequate consumer protection and privacy standards are met.

**10092.13(a):** This provision is necessary to both inform the Eligible Commercial Financing Customer that it is required to affirm that it has read and acknowledges the Privacy Rights Disclosure Form and to ensure that it makes the affirmation to release Project data under the Program.

**10092.13(b)(1-2):** These provisions are necessary to ensure the customer is an Eligible Commercial Financing Customer financing a Project through a Finance Provider Entity and to acquire the account number associated with its Eligible Financing Agreement. This information is necessary to implement the Program.

**10092.13(b)(3-5):** These provisions are necessary to ensure that the Finance Provider Entity issued the Eligible Financing Agreement compliant with Program regulations and the terms submitted to and approved by the Authority at the time of enrollment for participation in the Program. They are also necessary to identify and contact the Eligible Commercial Financing Customer and to associate it with the financing agreement, which is required to implement the Program.

**10092.13(b)(6):** This provision is necessary for the Authority to monitor the status of Enrolled Financing Agreements to assess risk to Loss Reserve Account funds based on its status and the Eligible Commercial Financing Customer's repayment history. Information about the repayment

of its Enrolled Financing Agreement is also necessary to track and analyze repayment performance data to determine the Program's effect and strengthen its impact and usability. This information is necessary to effectively implement the Program.

**10092.13(b)(7):** This provision is necessary to verify Project compliance with Program regulations and ensure proper calculation of the Loss Reserve Contribution to safeguard ratepayer funds. Information about the measures installed on the Project is also necessary to track and analyze their effect on energy usage to determine and strengthen the Program's effect, impact, and usability.

**10092.13(b)(8):** This provision is necessary to track the use of rebates and incentives in combination with Program financing when installing Energy Efficiency upgrades. This data is necessary to evaluate the effectiveness of the Program both when it is utilized independently and when combined with IOU/REN/CCA rebate and incentive programs.

**10092.13(b)(9):** This provision is necessary for the Authority to track the effectiveness of the installed Energy Efficiency measures to reduce energy consumption, and the resulting effect on the Eligible Commercial Financing Customer's energy costs to determine overall energy savings from participation in the Program. This provision is also necessary to link the Eligible Commercial Financing Customer to the IOU utility account in order to track energy consumption date for pre- and post-project analysis.

**10092.13(b)(10):** This provision is necessary to track and analyze the Program's effect on post-Project energy consumption and the ability to stimulate deeper reductions in energy consumption, and use the findings to strengthen the Program's impact and usability. For Savings-Based Payment Agreements, this provision is also necessary to measure and compare actual savings being realized by the Eligible Commercial Financing Customer to anticipated savings, and ensure that actual savings are "cash flow positive" and any better-than-expected savings are shared with the Eligible Commercial Financing Customer.

**10092.13(c):** This provision is necessary to inform the Eligible Commercial Financing Customer of who may provide its data to the Authority and how the information may be combined with energy usage data. This provision is necessary so that the customer can make an informed decision about whether to agree to participate in the Program and to the release of the information. This provision is further necessary for the Authority or the Program evaluators to determine the Program's efficacy.

**10092.13(d):** This provision is necessary to inform the Eligible Commercial Financing Customer of other state and federal agencies that may acquire the information and how release of the information will be anonymized and aggregated in an attempt to protect the identity of the customer. This provision is necessary so that the customer can make an informed decision about whether to agree to the release of the information.

**10092.13(e):** This provision is necessary to inform the customer that the Authority, IOUs, and the CPUC may attempt to contact the Eligible Commercial Financing Customer in order to schedule an on-site visit or invite them to participate in surveys relating to its experience in the

Program. This provision is necessary so that the customer can make an informed decision about whether to agree to participate in the Program and to the release of the information. Contacting the Eligible Commercial Financing Customer is necessary to perform post-Project Quality Assurance and Quality Control verifications and to gain insight into customer experiences to strengthen the Program's impact and usability.

**10092.13(f):** This provision is necessary to inform the Eligible Commercial Financing Customer of who will have access to the information being collected, including the customer itself. This provision is necessary so that the customer can make an informed decision about whether to agree to participate in the Program and to the release of the information. It is necessary for the Eligible Commercial Financing Customer to have access to the information collected, which pertains to them in order to provide transparency into the Program and what and how its data is being collected.

**10092.13(g):** This provision is necessary to obtain a legally binding document from a person authorized to represent the Eligible Commercial Financing Customer stating that that it has read and acknowledges the privacy rights disclosure and that it has the authority to agree to its terms.

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

The Authority relied on experts from both the public and private sectors, and rules and regulations for similar programs in California and other states to develop the requirements for financial institutions and finance lenders to participate in the Program. In addition, the Authority relied on direct discussions with current and former staff from other states or programs with similar programs, with significant input from the State of Connecticut Green Bank and from former staff from Fannie Mae's energy loan program. The eligibility criteria, as defined in this regulation, were established in consultation with the California Public Utilities Commission and investor owned utilities staff. The Authority relied upon the Decision and the following related CPUC documents (subsequently referred to collectively throughout this document as the "Proceeding") in proposing the adoption of this regulation:

- Decision 13-09-044, Decision Implementing 2013-14 Energy Efficiency Financing Pilot Programs (the "Decision"), issued September 20, 2013
- 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, issued September 11, 2014
- Administrative Law Judge's Ruling regarding Changes to Decision 13-09-044, issued July 23, 2015
- Assigned Commissioner's Ruling Extending Pilot Programs, issued August 25, 2014
- Decision 15-06-008 Modifying Decision 13-09-044, Issued June 11, 2015
- Administrative Law Judge's Ruling Requesting Comments on Harcourt Brown & Carey Revised Recommendation Regarding Energy Efficiency Equipment Lease financing, issued July 23, 2015
- Decision 15-12-002, Modifying Decision 13-09-044, Issued December 3, 2015
- Decision 17-03-026, Decision Addressing Energy Efficiency Financing Pilot Programs Originally Ordered in Decision 13-09-044, Issued March 23, 2017

- Resolution E-4900, Adopts metrics as tools to contribute to the determination of the long-term viability of energy efficiency finance pilots, December 14, 2017

The Authority relied upon the following documents and studies (subsequently referred to collectively throughout this document as the “Studies”) in proposing the adoption of this regulation:

- Energy Efficiency Financing Implementation Primer (DOE SEE Action, January 2014)
- Financing Energy Improvements on Utility Bills (DOE SEE Action, May 2014)
- Energy Efficiency Finance Programs-Use Case Analysis (DOE SEE Action, July 2014)
- California Energy Efficiency Finance Data Working Group Final Report (California Energy Efficiency Finance Data Working Group, December 2013)
- Getting the Biggest Bang for the Buck - Exploring the Rationales and Design Options for Energy Efficiency Financing Programs (LBNL, December 2013)
- Using Financing to Scale Up Energy Efficiency (DOE SEE Action, July 2013)
- Recommendations for Energy Efficiency Finance Pilot Programs (Harcourt Brown & Carey, October 2012)
- Interactions Between Energy Efficiency Programs Funded Under the Recovery Act and Utility funded Energy Efficiency Programs (LBNL, March 2011)
- PG&E Energy Upgrade California 2013-2014 Home Upgrade Participant Handbook, version 4.2, July 2, 2014
- Opinion Dynamics and Dunsky Energy Consulting, Final CPUC REEL Pilot Impact Evaluation Considerations, December 29, 2017
- Transforming Small Business Participating in Energy Efficiency: Driving Energy Savings with a Progressive Approach to Small Business Direct Install Program, (Nexant, 2013)
- Big Opportunities for Small Business: Successful Practices of Utility Small Commercial Energy Efficiency Program (American Council For an Energy-Efficiency Economy, November 2016)

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

There are no alternatives to this regulation that the Authority considered as it believes it is obligated to provide this disclosure to all Eligible Commercial Financing Customers under the Program, and collect the necessary data as required and envisioned under the Decision.

6. Alternatives to the Proposed Regulation Action that Would Lesson 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 efficiency improvements for their businesses.

## SECTION 10092.14. ENERGY SAVING MEASURE LIST

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

Creating 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. Providing a list of pre-approved measures will reduce the administrative burden on the Authority by minimizing the need to review projects individually and will streamline participation and reduce costs for customers that do not have access to an Energy Professional. One statewide list was necessary to reduce complexity and streamline the Program, which will increase Program participation.

2. Specific Purpose of the Regulation.

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. In providing this list of pre-approved measures, the Authority intends to enable easy identification and use of measures that are anticipated to save energy in a majority of projects and situations.

Each measure includes a measure category, the measure name, eligibility requirements (if any), IOU fuel source eligibility, and self-install eligibility. IOU fuel source eligibility defines the type of IOU service necessary for measure eligibility. In any situation in which the Title 20, Title 24, or any other legal requirement exceeds the requirement specified in the table, the ESM must be installed to meet the legal requirement(s).

A subset of measures are eligible to be installed by the Eligible Commercial Financing Customer without a Participating Contractor, provided that a Participating Project Developer is affiliated with the Project. These measures are identified on the ESM List as “Self-Install” eligible.

The ESM List is broken down into categories that address technologies such as lighting and HVAC, and specific end-use applications such as data centers and food service. Technology measures are cross cutting in that they are likely to be applicable to nearly all customer types. The measures in end-use application categories are unique to that particular category and are unlikely to apply elsewhere. The purpose of each category and associated measures included on the ESM List is as follows:

**Agriculture** [end-use application] – this category includes measures that are associated with the unique equipment and operations of agricultural facilities such as farms, dairies, and greenhouses. Example: agriculture measures include irrigation pumps, plate coolers, and ventilation fans.

**Appliances** [technology] – this category includes measures that address consumer-grade (non-commercial) appliances that are commonly used by small businesses. Example: appliance measures include clothes dryers, dishwashers, and refrigerators.

**Building Envelope** [technology] – this category includes measures that address the physical aspects of a building that separate the conditioned and unconditioned environments. Example: building envelope measures include air sealing, insulation, and windows.

**Data Centers** [end-use application] – this category includes measures that are associated with the unique equipment and operations of data centers such as telecommunication facilities, server rooms, and data storage systems. Example: data center measures include airflow management, efficient network equipment, and server consolidation.

**Demand Response** [technology] – this category includes measures that enable peak energy load reduction through demand response. Demand Response is included in the Program as an Energy Savings Measure based on CPUC Resolution E-4663, which states, *“It is reasonable to further the Commission’s policy of encouraging integrated demand side management by allowing DR-enabled technologies and solutions to be included in energy efficiency projects that will be financed by the credit enhanced pilots in this program.”* Example: demand response measures include automated demand response equipment and thermal energy storage systems.

**Food Service** [end-use application] – this category includes measures that are associated with the unique equipment and operations of food service facilities such as restaurants, cafeterias, or commercial kitchens. Example: food service measures include commercial cooking equipment, low flow pre-rinse spray valves, and ventilation hood controls.

**HVAC** [technology] – this category includes measures that address heating, ventilation, and air conditioning (HVAC) equipment commonly found within small business buildings. Example: HVAC measures include economizers, fan controls, and variable frequency drives (VFDs). Note that all measures associated with domestic hot water are addressed in the Water Heating Category.

**Industrial** [end-use application] – this category includes measures that are associated with the unique equipment and operations of industrial facilities such as manufacturing, laboratories, and clean rooms. Example: industrial measures include compressed air, exhaust hood controls, and process heat recovery.

**Lighting** [technology] – this category includes measures that address indoor and outdoor lighting equipment. Example: lighting measures include networked lighting controls, LED downlights, and LED outdoor area lights.

**Other** – this category includes measures that do not fit wholly within other defined measure categories but offer the potential for energy savings. Example: other measures include energy audits, energy management systems (EMS), and IOU/REN/CCA Deemed Rebate – Other.

**Pool Products** [technology] – this category includes measures that are associated with the unique equipment and operations of facilities with indoor or outdoor pools such as fitness centers, hotels, and recreation facilities. Example: pool measures include pool heaters, pool covers, and pool pumps.

**Refrigeration** [technology] – this category includes measures that address commercial refrigeration equipment, which is considerably more complex than residential consumer refrigeration and is associated with applications such as reach-in refrigerated cases, walk-in coolers, and refrigerated warehouses. Example: refrigeration measures include door heater controls, evaporator fan controls, and reach-in coolers.

**Water Heating** [technology] – this category includes measures that address domestic water heating. Example: water heating measures include heat pump water heaters, low flow showerheads, and tankless water heaters.

### 3. Necessity.

CPUC Decision 17-03-026 (“D. 17-03-026”) gave the Authority, instead of the IOUs, authority over the list of eligible measures for the Program. Decision 17-03-026 also allowed financing of to-code measures through the Program. The ESM List is necessary for Participating Contractors, Participating Project Developers, and Eligible Commercial Financing Customers to identify and install measures that are pre-approved by the Authority to streamline and simplify the process. Publishing the ESM List in the regulations was the most effective way to allow for public engagement and comment on the list of Energy Saving Measures, following a lengthy stakeholder engagement and deliberative process. The ESM List indicates the IOU fuel source eligibility to ensure that ratepayer funds are aligned with measures that are likely to save energy within the same fuel source category from which those funds were collected.

All ESM List measures must meet minimum performance requirements to ensure that energy savings are realized by customers and the Program. The performance requirements may be equivalent to code, or may exceed code, depending on the measure. The measure performance requirements fall into one of the following categories:

- To-code. All ESM List measures must minimally meet California Title 20 or 24, where applicable, and must comply with all other codes and other legal requirements. To-code measures are permissible within the Program as described above. Many small business customers have existing buildings and equipment that perform below code, so this provision is necessary to offer these customers a financing option to meet code and for the Program to capture the energy savings possible from the replacement of existing below-code equipment.
- Above-code. Where there are prudent reasons to mandate a higher level of minimum efficiency requirements, the regulations do so. Several ESM List measures require ENERGY STAR certification (appliances, cooking equipment, data center equipment, select HVAC equipment, consumer lighting products, select pool products, select refrigeration equipment, and select water heating equipment) and DesignLights Consortium (DLC) qualification (commercial lighting products). ENERGY STAR certification, which generally requires more stringent energy performance compared to federal or state standards, is required for several measures since the certification is easily identified in the marketplace and products are readily available. ENERGY STAR is a program managed by the U.S. Environmental Protection Agency. (DLC) is an independent qualification agency for commercial lighting products. As with ENERGY STAR, DLC establishes equipment-level performance requirements for product



qualification. Both ENERGY STAR and DLC are well recognized by customers, contractors, and manufacturers as credible industry experts on energy efficiency products. Performance requirements are clearly and publicly identified and a wide range of compliant products are commercially available. Above-code requirements are necessary to establish minimum performance specifications for products that are capable of exceeding code requirements in order to maximize the energy savings potential for customers and the Program.

- Product installation, configuration or operation requirements. Several ESM List measures include performance requirements that specify certain installation, configuration or operation attributes. Examples include separating hot and cold aisles of a data center or including a variable speed motor on a pump. These requirements address installation or operation characteristics that may not be covered by code and are necessary to ensure that measures are installed and operated in a fashion that will ensure energy savings for the customer and the Program.
- Eligibility clarification. Select ESM List measures include requirements that serve to clarify the measure eligibility, but do not relate to performance, installation, or operation. Examples include defining smart thermostats as both programmable and communicating, or metering equipment that must be installed with at least one other non-lighting measure. These requirements are necessary to clearly identify ESM List measure eligibility for the Program.

The necessity of each category and associated measures included on the ESM List is as follows:

**Agriculture** [end-use application] – this category is necessary since agricultural facilities are energy-intensive operations with many opportunities for Energy Efficiency. The measures included in this category address several energy-consuming end uses at agricultural facilities including moving water or milk with pumps and motors, cooling milk, and ventilating barns or greenhouses. The agriculture measures do not include any performance requirements beyond existing applicable codes.

**Appliances** [technology] – this category is necessary since commercial customers, particularly small businesses, often use consumer-grade appliances in areas such as break rooms, kitchens, and fitness facilities. The appliance measures included in this category all require ENERGY STAR certification.

**Building Envelope** [technology] – this category is necessary since building envelope measures are a challenging area to address due to cost and complexity involved in altering the physical structure. By including these measures on the pre-approved ESM List, The Authority hopes to encourage their adoption through easily accessed financing. Most building envelope measures on the ESM List do not include any performance requirements beyond existing applicable codes. Cool Roof measures must be certified by the Cool Roof Rating Council, which is an independent third-party product rating and certification entity that is also referenced by Title 24. This was necessary to ensure that the Cool Roof is appropriately installed and is more likely to save energy. Heat Reflective Coatings, which are not addressed by Title 24, must have a solar reflectance requirement that aligns with the PACE and HERO programs to ensure that products

meet a minimum performance requirement. This was necessary to establish reasonable industry standards that are anticipated to save energy.

**Data Centers** [end-use application] – this category is necessary since data centers are extremely energy intensive and have many opportunities for energy efficiency savings and to address the needs of the industry. Several measures on the ESM List address the significant cooling needs of data centers by optimizing the layout, containment, and airflow in the space. Additional measures address the energy use of the data center equipment, such as servers and power supplies, by requiring ENERGY STAR certification. Specific standards were established to represent measures that are commonly understood by the industry to save energy.

**Demand Response** [technology] – this category is necessary since many small business facilities have an opportunity to reduce peak demand usage through the installation of demand responsive equipment. Mechanical and thermal storage must be installed to enable permanent load shifting, which is a demand response approach identified in the CPUC Distributed Energy Resources (DER) Action Plan.<sup>5</sup> The Authority specifically and intentionally excluded battery storage as a demand response measure given the varied ways in which battery storage technology can be used and based on the CPUC classification of battery storage as a distributed generation technology.

**Food Service** [end-use application] – this category is necessary since food preparation requires energy intensive equipment that is not addressed by other measure categories. The food service measures were identified to address all aspects of commercial cooking, commercial dishwashing, and ventilation. Where applicable, commercial cooking equipment is required to be ENERGY STAR certified.

**HVAC** [technology] – this category is necessary since all conditioned buildings include some form of HVAC equipment, and nearly all HVAC equipment has the opportunity for energy savings. The included HVAC measures enable more efficient heating or cooling of air or water, more efficient distribution of air or water, and strategies that reduce the need for conditioned air or water. The following HVAC measures include performance requirements: ventilation fans and in-unit furnaces must be ENERGY STAR certified; in-unit mini split air conditioning must be rated at or above 18 SEER to align with the Residential Energy Efficiency Loan (REEL) program administered by the Authority; and several measures include requirements that clarify the eligibility of the equipment by specifying required capabilities such as being variable speed or programmable.

**Industrial** [end-use application] – this category is necessary since industrial facilities use considerable amounts of energy with many opportunities for energy efficiency. While industrial operations and equipment can vary, the measures included in the ESM List industrial category are commonly found among most industrial operations. Several measures address the many aspects of compressed air, including compressors, tanks, receivers, and distribution. The efficiency, speed, and operation of pumps and motors are similarly common measures among industrial facilities. High performance circulator pumps must employ variable speed controls and

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[http://www.cpuc.ca.gov/uploadedFiles/CPUC\\_Public\\_Website/Content/About\\_Us/Organization/Commissioners/Michael\\_J\\_Picker/DER%20Action%20Plan%20\(5-3-17\)%20CLEAN.pdf](http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/About_Us/Organization/Commissioners/Michael_J_Picker/DER%20Action%20Plan%20(5-3-17)%20CLEAN.pdf)

an ECM motor, and premium efficiency motors must meet EISA 2007 (unless superseded by Title 20).

**Lighting** [technology] – this category is necessary since lighting is ubiquitous among small business customer and is the most commonly addressed Energy Efficiency measure. Significant savings are possible for all types of lighting equipment. The ESM List includes lighting measures in several subcategories. Lighting controls reduce the operation or intensity of lighting depending on factors such as the absence of occupants, the presence of daylight, or a schedule. Lighting controls may be stand-alone components like vacancy sensors, fixture-integrated sensors, or fully networked solutions. Where applicable, DesignLights Consortium (DLC) qualification is required for networked controls to ensure that a system will include the capabilities necessary to achieve the expected energy savings. Lighting Fixtures address the many product categories of indoor and outdoor lighting with Light Emitting Diode (LED) technology. Lamps address several form factors in which LED replacement lamps are available, including screw-base products or linear tubes. LED fixtures and lamps often reduce energy use compared to incumbent lighting technologies by 50% or more. DLC qualification is required for all commercially focused LED fixture and lamp product categories. ENERGY STAR certification is required for all consumer-focused LED fixture and lamp product categories. Both DLC and ENERGY STAR publish a qualified products list consisting of thousands of qualified products with performance levels that meet or exceed federal and state standards. Title 24 addresses lighting based on lighting power density, which prescribes a certain lighting load allowance depending on the space type. Lighting power density does not set performance criteria for any particular product or technology. In order to establish product-level criteria for ease of participation under the Program, the Authority relies on DLC and ENERGY STAR certification.

**Other** – this category is necessary since some Energy Efficiency measures are crosscutting and do not fit specifically or wholly within other defined categories. Building Management Systems (BMS) and Energy Management Systems (EMS) enable whole-building control and management of energy consumption. Energy Audits can aid commercial customers in identifying energy saving opportunities. Energy Measurement/Metering/Monitoring provides customers with visibility into their energy consumption, particularly for non-lighting equipment such as HVAC. This measure alone is unlikely to save energy but can enable improved control of other energy consuming equipment. The Authority has specified that Energy Measurement/Metering/Monitoring equipment must be installed with at least one other non-lighting Energy Saving Measure to ensure that energy savings can be realized through the project. The Other category also includes measures that are likely to save energy but don't fit well into other categories, such as generator heaters, transformers, and plug load controls. Finally, the Other category includes a measure to enable the use of products and technologies that may be supported through an IOU/REN/CCA deemed rebate program but are not addressed elsewhere on the ESM List.

**Pool Products** [technology] – this category is necessary since operating and maintaining a pool is an energy intensive endeavor with several opportunities for efficiency. The ESM List includes measures within the Pool Products category that address the energy consumption of pool pumps for water filtration, water heating, and pool covers to reduce heat loss. Pool heaters and pool pumps must be ENERGY STAR certified.

**Refrigeration** [technology] – this category is necessary since commercial refrigeration equipment is ubiquitous among grocery stores, convenience stores, and restaurants. The refrigeration measures selected for the ESM List address energy saving technologies and techniques associated with compressors, condensers, evaporators, refrigerant controls, fan controls, pumps, and motors. Select refrigeration measures require commercial ENERGY STAR certification, including ice machines, commercial refrigerators or freezers, reach-in refrigerators or freezers, and vending machines.

**Water Heating** [technology] – this category is necessary since water heating equipment is common among small businesses. The energy consumption of water heating appliances can be reduced through low-flow controls at the point of use and/or improved operational efficiency of the water heating equipment. Select measures (heat pump water heaters, gas tank water heaters, and gas tankless water heaters) require ENERGY STAR certification.

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

The Authority relied on the Proceeding and Studies, IOU staff, the California Energy Commission, experts from both the public and private sectors, stakeholder input, and rules and regulations for similar programs in California, particularly those administered by the utilities or local governments, to develop this regulation. The Authority also relied on the following resources:

- California Public Utility Commission Database for Energy Efficient Resources (DEER)
- California IOU prescriptive, midstream, and custom measure lists
- California Statewide Customized Offering Procedures Manual for Business
- Technical Reference Manual (TRM) measure lists from other states including Michigan, Vermont, and Massachusetts
- Demand-side Management Market Potential Study (MPS) measure list from Nevada

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

The Authority considered allowing self-installers to install gas measures and determined that doing so created an inappropriate health and safety risk. The Authority classified measures as self-install eligible if they: (1) can be safely installed by the customer, (2) can be legally installed by the customer without a special license or certification, and (3) the energy performance of the measure is unlikely to be affected by the installation.

The Authority considered establishing measure eligibility at code for certain measures; however, given the goal of energy savings the Authority established above code standards when readily available and similar in cost in the market. Conversely, the Authority considered establishing measure eligibility criteria beyond code for certain measures, such as ENERGY STAR commercial boilers and furnaces; however, stakeholders and CEC staff highlighted technical installation challenges that make it impractical to retrofit such equipment to a performance level beyond code.

The Authority considered many new measures proposed by stakeholders during public workshops and through other public engagement processes. All proposed measures were vetted and in some cases were not included on the ESM list based on one or more of the following criteria: (1) applicability to California small business customers; (2) likelihood to reduce energy consumption in a majority of applications based on impartial evidence or experience; (3) commercial availability of the product or solution; and (4) presence of industry-accepted performance standards.

6. Alternatives to the Proposed Regulation Action that Would Lesson 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 upgrades to their business. Studies have cited the need for lower-cost financing as a barrier to for businesses to invest in energy upgrades.

## **ECONOMIC IMPACT ASSESSMENT**

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

The regulations are designed to establish the Program structure and 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 and environment generally because of the anticipated increased economic activity and energy conservation due to investments in energy upgrades. 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 who manufacture energy efficiency measures, and for contractors and project developers who conduct energy efficiency retrofits.

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. The Authority also finds that this regulation may have a positive benefit to the health and welfare of California residents and the state's environment since energy efficiency improvements to commercial properties will assist in energy conservation and the reduction of greenhouse gas emissions.

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

The regulations are designed to establish the Program structure and provisions and the type and level of financial assistance Finance Provider Entities may obtain if accepted to participate in the Program. These regulations will be carried out by existing staff and do not place a burden on businesses within California, therefore no existing businesses in California will be expanded or eliminated.

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**

The regulations are designed to establish the Program structure and provisions and the type and level of financial assistance Finance Provider Entities may obtain if accepted to participate in the Program, as well as requirements for Participating Contractors and Participating Project

Developers. The regulations may benefit the state's environment and the fiscal health by incentivizing finance companies to enter into financing agreements and offer new products to their customers who wish to make an energy efficiency investment.

California has developed several aggressive energy generation goals (such as to double the energy efficiency savings in electricity and natural gas final end uses of retail customers through energy efficiency and conservation, increasing energy efficiency by 50% by 2030) as well as goals for energy reduction and conservation. 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) has addressed various energy efficiency issues and provided direction for establishing ambitious energy goals for the state.

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, it is the intent of the Decision to reduce the overall cost to making these improvements. 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 Program is designed to increase access to financing and encourage an uptake in energy efficiency retrofits by offering an incentive to Finance Provider Entities that will help the State to reach its energy efficiency and climate goals.