

## **FINDING OF EMERGENCY**

### **CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION FINANCING AUTHORITY**

Article 6 (commencing with Section 10092.1), Division 13, Title 4 of the California Code of Regulations

Pursuant to Section 26009 of the Public Resources Code, the regulations being readopted with no additional modifications by the California Alternative Energy and Advanced Transportation Financing Authority (“CAEATFA”) as emergency regulations are expressly deemed in statute to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. CAEATFA is incorporating by reference OAL file number 2021-0707-01E to this Finding of Emergency.

#### **Authority and Reference**

Authority: Public Resources Code Sections 26006 and 26009. Section 26009 of the Public Resources Code authorizes CAEATFA to adopt emergency regulations necessary for the immediate preservation of the public peace, health, safety, or general welfare in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

Reference: Public Resources Code Sections 26002, 26002.5, 26003(a)(3)(A), 26003(a)(6), 26003(a)(7)(A), 26003(a)(8)(A), 26006, 26011, and 26040. CAEATFA’s purpose is to advance the State’s goals to reduce the levels of greenhouse gas emissions, increase the deployment of sustainable and renewable energy sources, implement measures that increase the efficiency of the use of energy, create high quality employment opportunities, and lessen the State’s dependence on fossil fuels. CAEATFA’s authorizing statutes enable it to provide financial assistance to various participating parties that carry out eligible projects.

#### **Informative Digest**

The California Alternative Energy and Advanced Transportation Financing Authority Act establishes the California Alternative Energy and Advanced Transportation Financing Authority (“CAEATFA”) and requires CAEATFA to establish programs to provide financial assistance to participating parties for projects related to alternative energy sources and advanced transportation projects. Existing law authorizes CAEATFA to receive and utilize grants or loans from the federal government, a public agency, or any other source for carrying out the purposes of the Act.

Pursuant to this statutory authority, CAEATFA is the administrator of the California Hub for Energy Efficiency Financing (“CHEEF”) under a Memorandum of Agreement with the Public Utilities Commission (“CPUC”), and the Decision Implementing 2013-14 Energy Efficiency Financing Pilot Programs, Decision 13-09-044 (“Decision”). The Commercial Energy Efficiency Financing Program (the “Program”) is one of several energy efficiency financing programs administered by CAEATFA through the CHEEF.

The Program launched in July 2019, the second of the CHEEF pilot programs developed by CAEATFA, and targets the small business sector. The Program offers finance companies a credit enhancement in the form of a loss reserve contribution for every enrolled financing agreement.

The amendments being readopted in these emergency regulations respond to the challenges and lessons learned from implementing the Program over the last two years. CAEATFA is streamlining certain aspects of the Program to reduce barriers to participation and adding new features that will help efforts to reach more small businesses.

Further, in the Decision, the CPUC authorized On-Bill Repayment (“OBR”) to be included in several of the CHEEF pilot programs, including the Program. The CPUC provided additional guidance about OBR in subsequent Decisions 15-06-008, 15-12-002, and 17-03-026. The addition of OBR in these proposed amendments responds to CPUC direction and guidance and implements the CPUC’s order that OBR be included in the Program.

In the emergency modifications to regulations adopted in July of 2021, CAEATFA made substantial modifications to incorporate OBR as a program feature, create a streamlined path for microloans of \$10,000 and under, and simplify lender reporting requirements in response to input from participating finance companies. Since the initial emergency action was approved by OAL in file number 2021-0707-01E, CAEATFA has worked diligently to implement these amendments. Adding OBR to the Program has been a complicated and time-intensive process with coordination between the many parties involved. CAEATFA has worked with utilities and other stakeholders to create channels for small businesses to access microloans. CAEATFA has also continued to receive finance companies’ input on the OBR structure.

Given the time-intensive nature of implementing the amendments and ongoing solicitation of feedback from stakeholders it is necessary to readopt the emergency regulations, with no additional modifications from the initial emergency action, to allow CAEATFA enough time to complete the Certificate of Compliance.

#### Key Modifications:

Among various clarifications and updates, the amendments to the regulations:

1. Create a new Microloan pathway for financing agreements \$10,000 or less, with simplified requirements easing the enrollment process for finance companies.
2. Add new Energy Saving Measures, including appliances, HVAC, lighting, refrigeration, water heating, agricultural measures for greenhouses, and other measures including those for commercial laundry.
3. Expand eligibility for self-installation to include certain HVAC, refrigeration, insulation, metering and monitoring equipment, controls, data center, and agricultural measures. Measures were considered eligible for self-installation if they met the requirement that installation can be performed safely and effectively without a licensed contractor. The requirement that a participating Project Developer certify projects with self-installed measures was not included for Microloans.

4. Allow for on-bill repayment of financing payments through the customer's Investor Owned Utility ("IOU") bill.
5. Streamline the financing enrollment and reporting process for existing finance companies to accommodate new business models and facilitate automation.

CAEATFA has reviewed existing regulations on this topic and has concluded that the proposed regulations are not inconsistent nor incompatible with existing state regulations.

### **Non-Substantive Changes in Multiple Sections**

Throughout the regulations, CAEATFA made non-substantive changes that improve readability, bring consistency, correct grammar, and reorder provisions. Section references and details of these non-substantive changes are not included in the section that lists substantive changes and establishes necessity.

- §10092.1(v): This subsection was amended to change "each" to "all."

Necessity: This change was necessary to use a more precise term. The term "each" refers to the subsections individually, emphasizing them as separate items. The term "all" refers to a set of program requirements as a whole, emphasizing their unity as a body of standards which must be adhered to. The change makes clear to the reader that all requirements must be met.

- §10092.1(nnn)  
 §10092.2(b)(1)(A)  
 §10092.2(c)(4)(A)  
 §10092.4(a)(1)  
 §10092.4(a)(2)  
 §10092.4(b)(1)(C)  
 §10092.4(b)(2)(B)  
 §10092.4(d)(5)(A)  
 §10092.5(b)(3)  
 §10092.9(a)(2)  
 §10092.9(c)(3)  
 §10092.9(c)(4)  
 §10092.9(e)(1)  
 §10092.9(e)(2)  
 §10092.9(e)(3)  
 §10092.10(f)  
 §10092.11(a):

These subsections were amended to change references to the word "per," "under," "according to," "in accordance with," and "provided under" to "pursuant to."

Necessity: These amendments were necessary to increase accuracy and consistency of regulations language by using the more precise term when referencing another section within the regulations.

- §10092.2(c)  
§10092.2(c)(4)  
§10092.2(c)(5)  
§10092.2(c)(7)  
§10092.2(f)(1)  
§10092.3  
§10092.3(g)  
§10092.2(h)  
§10092.2(c)(5)(B)  
§10092.4(b)(5)  
§10092.4(b)(6)  
§10092.4(b)(7)  
§10092.4(b)(8)  
§10092.8(b)(3)(A)  
§10092.8(b)(3)(D):

These subsections were amended to change all instances of “a person” to “an individual.”

Necessity: These amendments were necessary to improve consistency of regulations language.

- §10092.2(c)(7)(D)  
§10092.2(c)(7)(E)(v)  
§10092.4(c)(5)(C)(v)  
§10092.4(c)(6)(C)(v):

These subsections were amended to change “CAEATFA” to “the Authority.”

Necessity: These amendments were necessary to improve the consistency of regulations language. Instances of “CAEATFA” in Section 10092.13 were not amended because it contains precise legal disclosure language meant to introduce CAEATFA to the reader.

- §10092.2(c)  
§10092.3  
§10092.4(c)(7)(J)(formerly)  
§10092.8(b)(3)(A)(vii)(formerly)  
§10092.8(b)(3)(D)(vii)(formerly)  
§10992.10(e)(5)(formerly):

Language was removed that required Primary Finance Provider Applicants, Affiliate Finance Provider Applicants, Eligible Contractors, and Eligible Project Developers to acknowledge that all the information provided will be true and correct to the best of the signatory’s knowledge.

Necessity: The regulations already require these participants to sign the Program applications by a person authorized to legally bind them.

- *Updated all references to statutory authority at the end of each section*

This change was made to be more comprehensive and inclusive of the relevant sections of

the Public Resources Code.

## **Substantive amendments and necessity for each section of the regulations**

### **§10092.1: Definitions**

This section defines and describes the terms used throughout the Program regulations. Amendments were made to the following defined terms:

- §10092.1(l): “*Delayed Bill*” was added to describe a delay of the date on which an IOU is scheduled to send a monthly bill to an OBR Customer.

Necessity: This defined term was necessary to clearly identify what a delayed bill entails and when it occurs. A delayed IOU bill is one of the two events that can trigger the use of the Operational Reserve Fund (ORF) as described in Section 10092.15(i)(1)(A). A delayed bill can impede the normal repayment stream to a finance company; the ORF mitigates this risk by providing an interim advance of funds to the finance company for a delayed payment.

- §10092.1(u): “*Eligible Property*” was amended to update “residential rentals” to “residential housing.”

Necessity: This amendment was necessary to be more inclusive of residential housing business models, such as leasing. For instance, leasing could be interpreted as being precluded by the previous definition.

- §10092.1(g): This subsection was amended to change “any:” to “both of the following:”

Necessity: This amendment was necessary to clarify that both subsections were included in calculating the Claim-Eligible Financed Amount.

- §10092.1(ss): “*Microloan*” was added as a new type of Eligible Financing Agreement with a Total Financed Amount of \$10,000 or less.

Necessity: This amendment was necessary to meet an industry need for the financing of small projects that otherwise might be difficult to qualify for financing. The amount of \$10,000 is a threshold below which most participating Program finance companies consider a financing agreement to be cost-prohibitive or burdensome without additional support. However, it is high enough to capture many types of installations for small business owners for which financing would be helpful, so adding Microloans to the Program enables finance companies to serve these businesses. In order for very small leases or loans to be economically viable, finance companies need access to the Program’s loss reserve, streamlined eligibility checks, and simple requirements for the provision of data and documentation at enrollment. The Microloan provides this simplification. CAEATFA considers the Program requirements for the Microloan product to appropriately balance the risk to borrowers, lenders, and ratepayers associated with these small financed amounts. Sections 10091.6(a) and 10092.8(b)(2) describe the customer eligibility and data requirements, respectively, as they apply to Microloans.

- §10092.1(*ww*): “*OBR Approval Date*” was added to define the date that an IOU confirms the OBR Total Charge will be added to the customer’s utility bill.

Necessity: This defined term was necessary to denote when the IOU confirms the customer’s utility account as ready to receive data related to OBR participation, an operational prerequisite for an IOU to add financing charges to the customer’s bill.

- §10092.1(*xx*): “*OBR Customer*” was added to define an Eligible Commercial Financing Customer who has chosen to participate in OBR.

Necessity: This defined term was necessary to differentiate a customer opting to repay their Enrolled Finance Agreement through OBR from those that have not opted to repay.

- §10092.1(*yy*): “*OBR Modified Charge Cutoff Date*” was added to define the date by which a finance company is required to inform CAEATFA of updates to the charge amount appearing on the customer’s next IOU bill.

Necessity: This defined term was necessary to set expectations for participating finance companies so that if they want to update the amount that appears on a customer’s bill, the finance company is required to provide the updated amount to CAEATFA prior to this date to allow enough time for the updated amount to appear on the customer’s next IOU bill.

- §10092.1(*xx*): “*OBR Removal Date*” was added to define a date on which an OBR customer is removed from participation in OBR and financing charges will no longer appear on the customer’s IOU bill.

Necessity: This defined term was necessary to establish a date on which an OBR Customer is no longer participating in OBR. It establishes the date after which a finance company may require payments from the customer in a method other than OBR or may accelerate the repayment of a financing agreement.

- §10092.1(*aaa*): “*OBR Tariff*” was added to reference Rule No. 43 On-Bill Repayment Tariffs filed by each of the IOUs through advice letters approved by the CPUC.

Necessity: This defined term was necessary to allow for reference to the tariffs without listing a full citation with each reference. The term was also necessary to remove ambiguity and misunderstanding among those participating in and interacting with the Program.

- §10092.1(*bbb*): “*OBR Total Charge*” was added to define the financing charge amount that appears on the customer’s IOU bill when participating in OBR.

Necessity: This defined term was necessary for CAEATFA to communicate to the IOU the correct charge amount that is to appear on the customer’s utility bill.

- §10092.1(*ccc*): “*On-Bill Repayment (OBR)*” was added to define the concept of OBR, a term used throughout the regulations.

Necessity: This defined term was necessary to reference OBR as a concept throughout the regulations and to clearly define the term, which could have multiple interpretations outside of the Program.

- §10092.1(ddd): “*Operational Reserve Fund (ORF)*” was added to define an account from which funds could be drawn to support the smooth operation of OBR when a Delayed Bill or Returned Item affect OBR repayments.

Necessity: This defined term was necessary to describe a reserve fund that will smooth the timings of repayments for finance companies. The ORF is necessary for the efficient operation of repayment streams to finance companies participating in OBR in the event of a Delayed Bill or a Returned Item, as those terms are defined in the Regulations.

- §10092.1(eee): “*ORF Balance*” was added to refer to money owed to the ORF by a finance company as a result of their benefitting from funds drawn on the ORF.

Necessity: This defined term was necessary to define how and when a finance company is required to reimburse funds drawn from the ORF from which they benefitted to make them whole. ORF Balance is used in the regulations to set expectations among Program participants, particularly for Finance Provider Entities that participate in OBR and may incur an ORF Balance during the course of their participation in OBR.

- §10092.1(mmm): “*Returned Item*” was added to define conditions under which an OBR Customer’s payment is not successful, resulting in a shortfall in OBR payments.

Necessity: This defined term was necessary because a Returned Item is one of two events that can trigger the use of the ORF, as described in Section 10092.15(h)(1)(B). A Returned Item can impede the normal repayment stream by reducing the amount of funds available to transfer OBR payments to a finance company and the ORF mitigates this risk by providing interim funding for Returned Items that negatively impact payments to finance companies whose customer did not cause the returned item.

- §10092.1(qqq): “*Total Charge-Off Amount*” was updated to add “at the time of charge-off” to subsection (2).

Necessity: This amendment was necessary to align Section 10092.1(qqq)(2) with Section 10092.1(qqq)(1) for clarity and consistency.

## **§10092.2. Finance Entity Enrollment**

This section describes the requirements, roles, and responsibilities of finance companies participating in the Program, the structure by which entities can apply to the Program as co-applicants, the contents and requirements of the application, the application process, the process for withdrawing from the Program, and the conditions under which CAEATFA may terminate a finance company’s participation in the Program.



- *§10092.2(c)(3)(B)*: This subsection was amended to change “program” to “product” related to the financing to be offered in the Program.

Necessity: This amendment was necessary to correct a typographical error in the regulations, to increase clarity, and to express CAEATFA’s original intent for the language in this section.

- *§10092.2(c)(3)(C)(ii)*: This subsection was amended to add the word “repayment” to the regulations language.

Necessity: This amendment was necessary to provide increased clarity by distinguishing between §10092.2(c)(3)(C)(ii), which refers to a term as a length of time to repay a financing agreement, and §10092.2(c)(3)(C)(v), which states “Other advantageous terms” and refers generally to financing terms.

### **§10092.3. Additional Requirements for Entities that are not Financial Institutions**

This section describes the additional requirements that Finance Provider Applicant’s, which are not considered to be or independently regulated similarly to Financial Institutions pursuant to the regulations, need to meet to be approved as a Finance Provider Entity (“FPE”) in the Program.

- *§10092.3(c), (c)(1), (c)(2), (c)(3), (c)(4)*,: These subsections were amended to move the requirement for the underwriting qualifications to be in writing to Section 10092.3(c).

Necessity: This amendment was necessary to reduce redundancy and to improve readability.

- *§10092.3(f)(4)*: This subsection was amended to clarify that CAEATFA intended to reference insurance coverage.

Necessity: This amendment was necessary to provide clarity to the public.

### **§10092.4. Contractor and Project Developer Participation**

This section describes the Program roles for Contractors and Project Developers and outlines the requirements for their application to, and participation in, the Program. Participating Project Developers assist customers in identifying a scope of work and may help them access financing and/or utility rebates and incentives. Project Developers may assist with supplying project data to the Program that makes enrolling projects easier for Participating Contractors and Finance Provider Entities. Project Developers are not required for a Project unless the Project includes one or more self-installed measures.

- *§10092.4(a)(3)*: This subsection was amended to create an exception to the requirement that a Participating Project Developer certify a self-installed project. The exception removes the requirement that a Project Developer certify a self-installed project if the project was financed by a Microloan.

Necessity: This amendment was necessary to make Project certification requirements for Project Developers clear and to allow the Program to be more accommodating to customers financing a small project when the customer decides to self install some or all measures. The creation of an exception to the Project Developer requirement for Microloans for self-



installed projects is necessary to reduce customer cost and streamline the financing submittal process. This amendment was also necessary to align with the changes made in Section 10092.7(c)(2).

#### **§10092.6. Eligible Financing Customers**

This section establishes minimum financial underwriting requirements for Eligible Commercial Financing Customers. This section was reorganized to reduce confusion and improve the readability. Substantive changes or additions are detailed below.

- *§10092.6(a)*: This subsection was amended to add a provision that describes the underwriting requirement for Eligible Commercial Financing Customers when the Total Financed Amount is \$10,000 or less.

Necessity: This subsection was necessary to set minimum underwriting requirements for financed amounts of \$10,000 or less. In general, the Program's underwriting requirements are designed to provide protections for both the borrower and ratepayer funds that are at risk in the event of a default. Financed amounts of \$10,000 or less present less of a risk to both borrowers and ratepayers than larger financings because both the financed amounts and the Program's loss reserve contribution is smaller. Due to the lessened risk and based on feedback from the finance industry, CAEATFA determined a credit or utility bill check are sufficient underwriting rules to balance protecting ratepayer funds against the risk of default. Further, Finance Provider Entities have a financial interest at stake in each enrolled financing agreement (as the loss reserve funds only cover them up to 90% of a loss, and because the loss reserve funds will only cover a portion of their portfolio), the requirements do not need to be overly prescriptive. CAEATFA assumes that because of their "skin in the game," Finance Provider Entities have an incentive to make their own sound underwriting decisions. FPEs are also allowed to impose more stringent criteria than is outlined in these regulations.

#### **§10092.7 Project Eligibility**

This section describes the general eligibility requirements for all projects, including Energy Saving Measure (ESM) eligibility.

- *§10092.7(c)(2)*: The requirement to have a Participating Project Developer on a project with a Self-Installer was removed on a project financed with a Microloan.

Necessity: This amendment was necessary to make the Program more accommodating to customers financing a small project when the customer decides to self install some or all measures. The removal of the Project Developer requirement for Microloans for self-installed projects is necessary to reduce customer cost and streamline the financing submittal process. This change aligns with the changes made in Section 10092.4(a)(3).

#### **§10092.8. Financing Submittal and Enrollment**

This section outlines the documentation, data, and certifications required to be submitted to CAEATFA, and the timing of those submissions, to enable CAEATFA to determine whether an Eligible Financing Agreement meets Program criteria for enrollment. CAEATFA is amending financing agreement enrollment requirements to provide flexibility as to how data is provided to the Program while still ensuring data integrity and compliance.

- *§10092.8(b)(1)(A)*: This subsection was amended to allow for the verification of electric or gas “delivery” rather than “service” provided by the IOUs.

Necessity: This amendment was necessary because the word “delivery” has a broader meaning and reflects the fact that Community Choice Aggregators (“CCA”) offer “service” of energy that is delivered by an IOU. This amendment was also necessary because Finance Provider Entities are allowed to finance measures for any non-IOU fuel within the 30% non-energy costs allowable as described in Section 10092.1(g), and a uniform requirement for Finance Provider Entities to submit both a gas and electric utility bill for each project is simpler than Finance Provider Entities deciding which utility bill to submit based on project characteristics. This amendment allows CAEATFA to accept additional IOU fuel delivery verification methods beyond the currently accepted method of providing CAEATFA a copy of a utility bill.

- *§10092.8(b)(2)*: This subsection was amended in two ways. First, it was modified to use a table format to more clearly identify the data elements required. Second, it was modified to specify when the Participating Contractor, Participating Project Developer, Finance Provider Entity, or Energy Professional, or any of the above is required to supply the data.

Necessity: This amendment was necessary to establish the process and timing to enroll an Eligible Financing Agreement in the Program. The documentation, data, and certifications required to enroll an Eligible Financing Agreement in the Program provide CAEATFA with the necessary information and data to ensure that submitted enrollment applications, and the corresponding Eligible Financing Agreements, meet all the eligibility requirements identified in various sections of the regulations. The required certifications are necessary to provide CAEATFA with assurances that Energy Saving Measurers (“ESM”) were installed in accordance with all applicable laws and that the information submitted is accurate. Certifications from the Eligible Commercial Financing Customer are necessary to ensure that installations were completed to their satisfaction and to receive their assurance that Program funds were used pursuant to Program regulations.

Data relating to ESMs and the method by which a measure qualifies for the Program were necessary for QA/QC purposes to be utilized to evaluate Program performance.

It was necessary to collect demographic data about the Eligible Commercial Financing Customer to understand and ensure that the Program is reaching a broad cross section of IOU ratepayers, including economically disadvantaged communities and those who would otherwise not qualify for financing, in accordance with Program goals. The collection of demographic data is also needed to target marketing and outreach funds.

It was necessary to amend the way the information in this provision is presented to increase clarity and consistency by improving the way the information is presented, which is designed to remove ambiguity and misunderstanding among those participating in and interacting with the Program.

*The following data points were removed for enrollment:* “Any additional fees charged to the Eligible Commercial Financing Customer and/or contractor,” “Permit number” (will be

sought during the post-enrollment quality assurance process), “The Scope of Work Completion Date for any work completed by a Self-Installer” (will be replaced by the finance company’s funding date). The “Exceptions” column lists conditions under which data points are required.

Necessity: This amendment was necessary as these data points were not needed or could be derived from other data points already provided. This change also reduces and streamlines the amount of data required from Finance Provider Entities and thereby reducing their operational burden when participating in the Program.

#### **§10092.10. Claims**

This section describes the conditions and process whereby a FPE may submit a claim, and if approved, receive reimbursement for a loss from an Enrolled Financing Agreement arising as a result of an Eligible Commercial Financing Customer’s default and the FPE’s final charge-off of some or all of the outstanding Claim-Eligible Financed Amount.

- *§10092.10(e)(1)(B)*: This subsection was amended to clarify that a claim application for an Enrolled Financing Agreement is required to include whether enforcement proceedings have commenced if the Enrolled Financing Agreement is secured.

Necessity: This amendment was necessary to clarify that this data point is required only if the Enrolled Financing Agreement is secured.

- *§10092.10(e)(1)(E)*: This subsection was amended to add the “Date of Charge-Off” to be included in a claim application.

Necessity: The addition of this data point was necessary to inform CAEATFA that the financing agreement has been charged off and to record the date of the charge-off.

- *§10092.10(f)*: This subsection was amended to clarify that the Executive Director of CAEATFA will approve or reject a claim application. The pronoun “it” was changed to “they” to indicate that the Executive Director is a person and not an entity. This subsection was also amended to change “shall” to “will” in determining if the claim application will be paid.

Necessity: This amendment was necessary to reduce ambiguity about who is approving or denying a claim application and make necessary grammatical changes.

#### **§10092.12. Reporting**

This section outlines the information that Finance Provider Entities are required to submit in monthly reports to CAEATFA. The reports include information regarding the status of, and any changes to, each Enrolled Financing Agreement under the Program.

- *§10092.12(b)(1)*: This subsection was amended to add the data point “Financing ID” to the monthly reporting requirement of the FPE.

Necessity: This data point was necessary to efficiently reference each financing agreement.

- *§10092.12(b)(2)(formerly) and (6) - (9)(formerly)*: These subsections were amended to remove the following monthly reporting data points: “Any changes to the maturity date or contractual end date, payment amount, and/or interest rate,” “Date(s) and amount(s) of any charge off(s) and whether enforcement proceedings have begun,” “Any anticipated losses and whether acceleration notices have been sent,” and “Amount of any recoveries or proceeds from charged-off financings.”

Necessity: These amendments were necessary to ameliorate a sometimes burdensome reporting process for Finance Provider Entities and to allow Finance Provider Entities to generate financing performance reports automatically from their systems. CAEATFA determined the removed data points were superfluous for monthly reporting needs and were only likely to be relevant in the event of a default and claim application to the Program.

- *§10092.12(c)*: This subsection was amended to clarify that after an Enrolled Financing Agreement is charged-off, finance companies do not have to report monthly on the status of that charged-off agreement.

Necessity: This amendment was necessary to align the regulations with the original intent of this subsection: There will be nothing to report on a monthly basis if an Eligible Financing Agreement is charged-off. If a FPE receives a recovery of funds, it will report on that recovery upon occurrence.

- *§10092.12(e)*: This subsection was amended to require the Finance Provider Entities to make a good faith effort to provide the Program with several Program activity and marketing data points upon request from CAEATFA, but not more than monthly.

Necessity: This amendment was necessary to bring the regulations in line with current practice and the other CHEEF programs. The data is valuable for CAEATFA’s marketing and public reporting efforts, but structurally different than monthly loan performance data reported in that it contains portfolio-wide and qualitative information opposed to quantitative values related to financing agreements already enrolled in the Program.

- *§10092.12(g)*: This subsection was amended to add that the FPE is required to report recovered amounts of any proceeds of a charged-off Enrolled Financing Agreement within 180 days. When the FPE does report a recovery, they are required to report the gross recovery amount and the net amount reimbursable to their Loss Reserve Account.

Necessity: This amendment was necessary to inform CAEATFA when a recovery occurs because the requirement that a FPE report any recovered amounts on a monthly basis was removed. Therefore, it was necessary to add a requirement that the FPE report recovered amounts as they occur within 180 days. The requirement that the FPE report the gross recovery amount and the net amount reimbursable to their Loss Reserve Account is necessary because CAEATFA needs to understand both gross and net recoveries.

### **§10092.13. California Hub for Energy Efficiency Financing Privacy Rights Disclosure**

This section sets forth the text of a Privacy Rights Disclosure form that describes the Eligible Commercial Financing Customer’s privacy rights under the Program. The form authorizes the

Participating Project Developer, Participating Contractor(s), IOU(s), and FPE(s) to share certain information with the Authority.

- *§10092.13*: The introductory paragraph was removed from the regulations.

Necessity: This amendment was necessary to remove superfluous language.

- *§10092.13(a)*: This subsection was amended to reference the information in subsections (b)-(g) to be included in the acknowledgment from the authorized representative of the Eligible Commercial Financing Customer.

Necessity: This amendment was necessary to remove ambiguity on what is required to be read and acknowledged.

- *§10092.13(f)*: This subsection was amended to change “the agency” to “CAEATFA” and to inform the customer that the term of the Privacy Rights Disclosure lasts through the term of their financing agreement.

Necessity: This amendment was necessary to use a consistent term of CAEATFA throughout the Privacy Rights Disclosure and to reduce ambiguity on the effective term of the Privacy Rights Disclosure as data may need to be accessed through the term of the financing obligation for reasons such as reporting and accessing Program effectiveness vis-a-vis energy savings.

#### **§10092.14. Energy Saving Measure List**

This section provides a list of ESMs that are pre-approved by CAEATFA for installation under the Program through the ESM List Method. By providing this list of pre-approved measures, CAEATFA intends to enable the easy identification and use of measures that are likely 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.

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.

*New Energy Saving Measures (ESMs):*

Dehumidification System using Solid or Liquid Desiccant	LED Horticultural Plug-in Light Fixture or Replacement Lamp
Dehumidification System with On-site Heat Recovery	LED Tape Lighting
Greenhouse Energy Curtain	Commercial Laundry - Clothes Washer (Electric Hot Water)

Convection Electric Oven	Commercial Laundry - Clothes Washer (Gas Hot Water)
Convection Gas Oven	Commercial Laundry - Dryer Moisture Sensor Retrofit (Electric)
Induction Range or Cooktop	Commercial Laundry - Dryer Moisture Sensor Retrofit (Gas)
Range Hood	Commercial Laundry - Modulating Gas Valve
Air Filter Alarm or Sensor	Other Measures Qualifying Through IOU/REN/CCA Programs - Self-Install
Air Filter Upgrade - HEPA	Evaporator Fan Permanent Magnet Synchronous Motor (PMSM)
Air Filter Upgrade - MERV	Laboratory Grade Refrigerator or Freezer
Dedicated Outside Air System (DOAS)	Refrigeration Tune-up and Optimization
Diagnostic or Fault Detection Alert Systems	Recirculating Hot Water Pump Control
Duct Sizing or Optimization	Water Pipe Insulation
Radiative Cooling	

Necessity: This amendment was necessary to add eligibility for new measures requested by stakeholders that are energy efficient for the Program to provide more options to customers. CAEATFA's technical consultant verified that these measures are highly likely to result in energy savings when installed in the vast majority of small businesses.

*Self-installability of several ESMs:* Several measures from the ESM List were changed to be allowed for self-installation. As a result of conversations with IOU Program implementers and others, CAEATFA is expanding the number of ESMs that are eligible for self-installation to include those listed below. These ESMs are being added as eligible for self-installation because concerns about safety and actual reductions in energy savings performance if not installed by a licensed contractor are minimal. Additionally, several ESMs have been allowed for self-installation in the categories of agriculture and data centers because these types of businesses likely have specialists on their staff who are capable of these installations.

Automatic Pump Shut-off Sensor	Aisle Containment
High Efficiency Booster or Well Pump	Aisle Layout Optimization

High Efficiency Irrigation Pump	Server Consolidation
High Efficiency Ventilation Fan	Server Virtualization
Plate Cooler	Hotel Guest Room Occupancy Temperature Control
Sprinkler-to-Drip Irrigation	Compressed Air Pressure Reduction
VFD on Booster or Well Pump Motor	Energy Measurement, Metering or Monitoring Equipment
VFD on Pump or Fan Motor	Add Insulation to Refrigerant Lines or Storage Tanks

Necessity: These amendments were necessary to expand the range of measures that are eligible for self-installation to more accurately reflect how these installations take place. The previous version of the ESM List limited installations that would be permitted under California law through the owner-builder exemption to licensed-contractor requirements. The expansion of the allowable self-install measures removes an unnecessary restriction on customers for these measures.

*Other ESM modifications:* Several ESMs were updated to expand the measure category to include other common installations, to clarify the language, or to bring the measures more in line with industry standards.

Residential In-Unit Clothes Washer	Commercial Laundry - Ozone System (Gas Hot Water)
Residential In-Unit Dishwasher	Other Measures Qualifying Through IOU/REN/CCA Programs
Cool Roof	Gas Pool Water Heater
Windows/Glass Doors	Heat Pump Pool Water Heater
Air-Source or Ground-Source Heat Pump	Evaporator Fan Brushless DC Motor
Duct Sealing	Faucet Aerator
ECM Furnace Fan Motor	Faucet Laminar Flow Restrictor
Furnace - Residential In-Unit	Shower Head - Low Flow
Residential In-Unit Wall Furnace	Shower Thermostatic Valve



LED Horticultural Hard-wired Light Fixture	Tank Insulation
Commercial Laundry - Ozone System (Electric Hot Water)	

Necessity: These amendments were necessary to increase clarity, simplify the ESM List for easier readability, and to make categories of eligible ESMs more inclusive of the types of installations being performed in the industry.

### **§10092.15. On-Bill Repayment**

This section was added to describe the regulations applicable to OBR, a mechanism by which a utility customer repays third-party private capital financing charges when they pay their monthly utility bill. This section describes the eligibility requirements for customers and financing agreements, functions of the Operational Reserve Fund, and requirements of finance companies to participate in OBR.

The obligations and timelines required of CAEATFA are also described in this section. These requirements are necessary to clearly communicate the requirements that are required to be met in order for a financing agreement to be repaid through OBR and so that participants understand the timelines in which CAEATFA will act.

Additionally, CAEATFA has identified challenges in the IOU billing and OBR operational mechanisms that could negatively affect the flow of funds from the customer to a finance company. These challenges can arise when two types of events occur: Delayed Bills that affect when an IOU sends a bill to a customer (and, therefore, delays when a customer pays a bill) and Returned Items from one or more customers that would potentially affect the remittance stream to finance companies other than the finance company with the account(s) that contain the Returned Item. To mitigate risk as a result of Delayed Bills and Returned Items, CAEATFA has established an Operational Reserve Fund (“ORF”). The ORF is a short-term, temporary advance of funds to a finance company designed to smooth the remittance stream due to these two payment disruptions. ORF utilization results in an ORF Balance owed by the finance company that benefited from its use and is required be repaid by the benefitting financing company. This section describes the use of the ORF and the mechanisms by which it is repaid.

Finally, certain requirements in this Section mention the OBR Tariffs. A tariff is a document created and submitted to the CPUC by the IOUs and approved by the CPUC after a public comment period. Tariffs govern interactions between the IOUs and their customers, and each IOU has an approved OBR Tariff. Thus, it was necessary for certain provisions relating to OBR to mirror, or be derived from, the rules outlined in the OBR Tariffs. Some examples of rules that are included in the regulations that are derived from the OBR Tariff include how customer payments are processed. For example, based on the OBR Tariff, the OBR regulations state that customer payments are applied to past due amounts prior to current charges. The OBR Tariff also states that partial payment, or non-payment, of a customer’s IOU bill, including financing charges, can result in IOU service disconnection and removal from OBR – a rule that is also included in the OBR regulations. Where applicable, it was necessary to establish rules that are

derived from the OBR Tariffs so that the Program regulations mirror the rules relevant to OBR that govern the interactions between the IOUs and their customers. In certain instances, it was necessary to cite the OBR Tariff to make clear that the rule is derived from the tariff.

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

- *§10092.15(a)(1)*: This provision was necessary to determine on which IOU bill to include financing charges when a customer is served by more than one IOU. Utilizing the installed costs was determined to be the simplest and most efficient method of determining on which IOU bill to include charges.
- *§10092.15(a)(2)*: This provision was necessary to establish a clear set of eligibility requirements related to a customer's IOU account.
- *§10092.15(a)(2)(A)-(B)*: These provisions were necessary to prevent customers who are having difficulty keeping current with their regularly occurring IOU charges from adding additional financing charges to their bill because it may increase the likelihood of missing a payment that could result in a service disconnection.
- *§10092.15(a)(2)(C)*: This provision was necessary to restrict participation in OBR to only commercial and market-rate multifamily customers. Single family residential customers are not permitted.
- *§10092.15(a)(2)(D)*: This provision was necessary to ensure that a customer participating in OBR is billed on a monthly basis so that the finance company can bill monthly finance charges. Some IOU customers do not receive monthly utility bills, which would prevent monthly financing charges to be paid through their bill.
- *§10092.15(a)(2)(E)*: This provision was necessary to allow financing charges for energy efficiency upgrades conducted at multiple locations to appear on one IOU bill and can be paid with one payment from the customer. Installations at multiple properties are allowed to be combined in a single financing agreement, but a single monthly payment for all properties reduces complexity compared to dividing charges amongst multiple property-specific utility bills.
- *§10092.15(a)(3)*: This provision was necessary to establish a clear set of eligibility requirements related to a customer's financing agreement.
- *§10092.15(a)(3)(A)*: This provision was necessary to align with the OBR Tariffs, which require the IOU customer to be named as a party on the financing agreement, ensuring the IOU customer is tied to the financing and its repayment through OBR. IOUs can only bill their customers and this requirement ensures that the IOU customer is a party to the financing transaction.
- *§10092.15(a)(3)(B)*: This provision was necessary to set limits on the composition of project costs that can be repaid through OBR. The Decision recommends that the Claim-Eligible

Financed Amount be eligible for repayment through OBR, including allowing up to 30% of this amount to be for non-energy measures. The Decision also indicates that charges repaid through OBR should be sufficiently related to energy savings. Therefore, permitting additional ESMs beyond the Claim-Eligible Financed Amount to be eligible for repayment through OBR increases the amount of savings possible per financing. Together, these maximize potential for energy savings while still allowing for the non-energy measures provided for in the Decision. Additionally, CPUC Decision 17-03-026 states that costs for Distributed Generation are eligible to be repaid through OBR.

- *§10092.15(a)(4)*: This provision was necessary to reference the Authorization to Add Charges to the Utility Bill, which the IOUs require to be signed by the IOU customer prior to an IOU authorizing charges to appear on their utility bill.
- *§10092.15(b)*: This provision was necessary to require data points needed by CAEATFA to direct the correct financing charge amount to be placed on the IOU customer's utility bill.
- *§10092.15(c)(1)-(4)*: These provisions were necessary to define CAEATFA's obligations to the finance companies relating to the placement, removal, and modification of the OBR Total Charge to appear on an OBR Customer's IOU bill.
- *§10092.15(d)(1)*: This provision was necessary to set expectations for finance companies relating to the timeline for an OBR Customer to begin receiving and repaying their financing charge on their IOU bill. Due to factors including variations in IOU billing cycle intervals, there will be a period of time between the OBR Approval Date and financing charges appearing on the customer's bill, which under certain circumstances may take multiple utility billing cycles.
- *§10092.15(d)(2)*: This provision was necessary to prevent a customer being charged more than once for their monthly financing through direct billing by the finance company and again on their IOU bill in the same billing cycle.
- *§10092.15(d)(3)*: This provision was necessary to define a specific length of time that a financing can be repaid through OBR. It would be impractical to allow a financing to be repaid through OBR indefinitely, however stakeholder feedback indicated that too short a period of time would affect the ability for borrowers to fully satisfy the repayment of financing agreements through OBR.
- *§10092.15(d)(4)*: This provision was necessary to communicate to a FPE a Program restriction and to align with the OBR Tariffs. OBR is intended to facilitate the monthly billing of energy efficiency financing charges, so if a finance company needs to accelerate repayment, the customer will first need to be removed from OBR.
- *§10092.15(e)(1)-(3)*: These provisions were necessary to establish the conditions under which an OBR Customer's financing charge is required to be removed from their IOU bill.
- *§10092.15(f)(1)*: This provision was necessary to inform Program participants that an OBR

Customer's failure to pay all the charges that appear on their utility bill, including the finance charges, may result in an utility service disconnection. This regulation was derived from the OBR Tariff.

- *§10092.15(f)(2)*: This provision was necessary to inform Program participants that each IOU processes partial payments according to the relevant IOU's OBR Tariff. Each IOU has its own methodology of calculating how partial payments are applied to charges due.
- *§10092.15(g)*: This provision was necessary to allow finance companies to adjust the charge amount that appears on the utility bill on a monthly basis, in accordance with the terms of the financing agreement with their financing customer. The provision was also necessary to establish that if a FPE needs to update the monthly payment, they need to communicate the updated amount that is to appear on the customer's next bill to CAEATFA before the OBR Modified Charge Cutoff Date.
- *§10092.15(h)*: This provision was necessary to establish a source of funds to smooth repayment streams from customers to finance companies when two specific events occur: Delayed Bills and Returned Items. The ORF is an account administered by CAEATFA and may be drawn upon if there is a Delayed Bill or Returned Item that creates a shortfall in a payment to a finance company when it is due to no fault of the finance company. The use of the ORF constitutes a short-term advance of funds to a finance company. Use of the ORF creates an ORF Balance that is required to be repaid by the finance company.
- *§10092.15(h)(1)(A)*: This provision was necessary to establish a mechanism that assists in preventing an interruption in repayment streams through OBR due to no fault of the customer or finance company but are the result of delays in IOU billing systems.
- *§10092.15(h)(1)(B)*: This provision was necessary to establish a mechanism that assists in preventing an interruption in repayment streams through OBR and provides assurance that a finance company receives the full amount of repayments from their OBR Customers when another finance company's customer has a Returned Item.
- *§10092.15(h)(1)(C)*: This provision was necessary to prevent ORF payments from being issued after the 15-year period allowed for repayment through OBR.
- *§10092.15(h)(2)*: This provision was necessary to clarify how an ORF Balance incurred as the result of a Delayed Bill or Returned Item and the timeline and requirements for the finance company to reimburse the ORF.
- *§10092.15(h)(3)*: This provision was necessary to specify CAEATFA's obligations if ORF funds become depleted.
- *§10092.15(i)(A)-(B)*: This provision was necessary to secure additional information from Finance Provider Applicants that are specific to participation in OBR, and are beyond those required in Section 10092.2, for participation in the Program.

- *§10092.15(i)(1)(C)*: This provision was necessary for CAEATFA to determine the impact of a FPE's participation in OBR on the benefits they provide to customers.
- *§10092.15(i)(1)(D)(i)*: This provision was necessary to ensure finance companies are aware that CAEATFA has no authority over, and can make no guarantees pertaining to, IOU billing systems.
- *§10092.15(i)(1)(D)(ii)*: This provision was necessary to ensure finance companies are aware that payments made from the ORF are required to be reimbursed and clarify that ORF payments are not intended as a loan or a line of credit.
- *§10092.15(i)(1)(E)(i)*: This provision was necessary to obtain acknowledgement from a participating finance company that it is required to comply with the rules articulated in the OBR Tariff.
- *§10092.15(i)(1)(E)(ii)-(vi)*: These provisions were necessary to obtain a participating finance company's certification that they will comply with the OBR rules and requirements set forth in these regulations.
- *§10092.15(i)(2)*: This provision was necessary to ensure that claims submitted by a finance company will be repaid net of any ORF Balance owed by that finance company.

### **Documents Relied Upon**

- CPUC Decision 13-09-044, Decision Implementing 2013-2014 Energy Efficiency Financing Pilot Programs
- CPUC Resolution E-4663: Submit for approval by the Commission as amended seven energy efficiency finance pilot program implementation plans (PIPs) to comply with OP 7.a and 7.b of D.13-09-044
- CPUC Resolution E-4680. Approve amended On Bill Repayment (OBR) tariffs for Energy Efficiency finance pilots to comply with OP 11 of D.13.09.044
- CPUC Decision 15.06-008, Decision Partially Modifying Decision 13-09-044 and Resolution E-4680 Implementing Energy Efficiency Financing Pilot Programs
- CPUC Decision 15-12-002, Decision Modifying Decision 13-09-044 Implementing Energy Efficiency Financing Pilot Programs
- CPUC Decision 17-03-026, Addressing Energy Efficiency Financing Pilot Programs Originally Ordered in Decision 13-09-044
- CPUC Decision 19-08-009, Decision Modifying the Energy Efficiency Three-Prong Test Related to Fuel Substitution
- San Diego Gas and Electric Company Rule No. 43 On-Bill Repayment gas and electric Tariffs
- Pacific Gas and Electric Company Rule No. 43 On-Bill Repayment gas and electric Tariffs
- Southern California Edison Company Rule No. 43 On-Bill Repayment electric Tariff
- Southern California Gas Company Rule No. 43 On-Bill Repayment gas Tariff

**Other Matters Prescribed by Statutes Applicable to the Specific State Agency or to any Specific Regulation or Class of Regulations**

No other matters are prescribed by statute applicable to CAEATFA or any specific regulation or class of regulations pursuant to Section 11346.1(b) or 11346.5(a)(4) of the Government Code pertaining to the Emergency Regulation or to CAEATFA.

**Costs to Any Local Agency or School District That Are Required to be Reimbursed in Accordance with Government Code Sections 17500 through 17630**

The Executive Director of CAEATFA has determined that the Emergency Regulations do not impose a mandate on local agencies or school districts (pursuant to Section 11346.5(a)(5) of the Government Code).

**Other Nondiscretionary Cost or Savings Imposed on Local Agencies**

The Executive Director of CAEATFA has determined that the Emergency Regulations do not impose any additional mandated cost or savings requiring reimbursement under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, or any other non-discretionary cost or savings to any local agency or any cost or savings in federal funding to the State. Pursuant to the State Administrative Manual Sections 6601-6616, a Fiscal Impact Statement (Form 399) is submitted without the signature of a Project Budget Manager at the Department of Finance as there are no fiscal impact disclosures required. There will be no cost or savings to any State Agency or effect on Federal funding to the State.

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