

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

*Request to Review Administrative Fee  
for the Property Assessed Clean Energy (PACE)  
Loss Reserve Program*

**Tuesday, May 17, 2016**

Prepared By: *Ashley Bonnett*

**REQUEST**

The California Alternative Energy and Advanced Transportation Financing Authority (“CAEATFA”) staff (“Staff”) request approval of a resolution maintaining the current PACE Loss Reserve Program (“Program”) administrative fee of 0.0000 (0%) of the principal value of each PACE financing issued by a participating PACE program.

**SUMMARY**

The Program’s regulations currently require enrolled PACE programs to pay an administrative fee of 0.0000 (0%) of the principal value of each PACE financing enrolled in the Program and specify that in May 2016, and every year thereafter, the Authority shall review the fee.

When the Program first launched, PACE programs were required to pay an administrative fee of 0.0025 (0.25%) of the principal value of each PACE financing enrolled in the Program for the purpose of covering the Authority’s long-term administrative, audit, and compliance monitoring costs of the Program, and to ensure the Authority had the resources necessary to effectively administer the Program over the life of the reserve, which may extend up to approximately 25 years after the last financing is enrolled. The Board suspended the administrative fee requirement at its January 20, 2015, meeting after Staff learned the Program will receive funding designated for the Program’s administrative costs through sources other than an administrative fee, as administrative costs are included in CAEATFA’s ongoing budget authority. The Board also approved retaining the existing requirement that the Authority review the fee on an annual basis to ensure the administrative fee can be adjusted if funding availability changes. The staff summary regarding the s Program administrative fee suspension can be found in Attachment A.

To date, the Program continues to receive ongoing funding for administrative costs, therefore charging an administrative fee is unnecessary at this time.

**Recommendation.** Staff recommends adoption of a resolution maintaining the PACE Loss Reserve Program administrative fee of 0.0000 (0%) of the principal value of each PACE financing issued by a participating PACE program.

Attachments:

- Attachment A Staff Summary on Proposal to Suspend the PACE Loss Reserve Program Administrative Fee (excluding original attachments)

**RESOLUTION OF THE CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION  
FINANCING AUTHORITY APPROVING ADMINISTRATIVE FEE AMOUNT FOR  
THE PACE LOSS RESERVE PROGRAM**

May 17, 2016

WHEREAS, the California Alternative Energy and Advanced Transportation Financing Authority ("Authority") is authorized by California Public Resources Code Section 26060 to administer a PACE risk mitigation program for PACE financing ("Program") to increase its acceptance in the marketplace and protect against the risk of default and foreclosure; and

WHEREAS, Title 4, Division 13, Article 4, Section 10085(b) of the California Code of Regulations provides that in May 2016, and every year thereafter, the Authority shall review the Program fee; and

WHEREAS, the Authority has determined that the current Program fee amount of 0.0000 (0%) of the principal value of each PACE financing enrolled in the Program is sufficient.

NOW, THEREFORE, BE IT RESOLVED by the California Alternative Energy and Advanced Transportation Financing Authority as follows:

Section 1. The Program fee amount of 0.0000 (0%) of the principal value of each PACE financing enrolled in the Program is hereby approved.

Section 2. This resolution shall take effect immediately upon its approval.

ATTACHMENT A

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

***Request to Consider and Approve Emergency Regulations for the Property Assessed Clean  
Energy (PACE) Loss Reserve Program***

**Tuesday, January 20, 2015**

Prepared By: *Ashley Bonnett*

**REQUEST**

CAEATFA staff (“Staff”) request approval of emergency regulations suspending the administrative fee requirement from the PACE Loss Reserve Program and changing the month in which the Authority shall review the administrative fee.

**Background on the PACE Loss Reserve Program.**

Property Assessed Clean Energy (“PACE”) is a growing and innovative method of financing energy efficiency, water efficiency, or renewable energy retrofits or electric vehicle charging stations for residential and commercial properties. Property owners in jurisdictions that have authorized special taxes or contractual assessments for these improvements can use PACE financing to retrofit their homes or businesses with no money down and pay for the assessment through their local property tax bill. Because PACE assessments are collected through property taxes, they have priority over other property-based debts in a foreclosure. While this priority allows PACE programs to offer lower interest rates, the Federal Housing Finance Agency raised concerns about the potential risk to first mortgage lenders associated PACE’s first-priority lien structure; therefore, Fannie Mae and Freddie Mac announced they would no longer purchase mortgages for homes with first lien priority PACE obligations, leading many PACE administrators to suspend their residential programs.

In 2013, Senate Bill 96 (Committee on Budget and Fiscal Review) authorized the California Alternative Energy and Advanced Transportation Financing Authority (“Authority” or “CAEATFA”) to create a risk mitigation program for residential PACE financing using \$10 million allocated in the Budget Act of 2013 (“PACE Loss Reserve Program” or “Program”) to help mitigate the potential risk to first mortgage lenders associated PACE’s first-priority lien structure. By supporting PACE financing, the Program promotes California-based jobs, the reduction of greenhouse gases, and the reduction of air and water pollution and energy consumption. For more information on PACE financing and the creation of the Program, please see the initial staff summary on the PACE Loss Reserve Program, found in Attachment A.

On February 18, 2014, the CAEATFA Board (“Board”) approved the initial PACE Loss Reserve Program regulations, which were adopted and made effective through the emergency rulemaking

process on March 10, 2014. Staff is currently completing the requirements for adopting the initial regulations pursuant to the regular rulemaking process. Since the Program's launch, eight PACE programs have enrolled a total of 17,401 PACE financings with a total principal value of over \$350 million.

**Summary of Issue.**

The Program's regulations currently require enrolled PACE programs to pay an administrative fee of .0025 (.25%) of the principal value of each PACE financing enrolled in the Program, excluding those outstanding at the time of Program enrollment. Administrative fees are paid with each semi-annual report submission, due March 1<sup>st</sup> for activity from July 1<sup>st</sup> through December 31<sup>st</sup> of the previous year, and October 1<sup>st</sup> for activity from January 1<sup>st</sup> through June 30<sup>th</sup> of the same year. The administrative fee was designed to cover the Authority's long-term administrative, audit, and compliance monitoring costs of the Program, and to ensure the Authority had the resources necessary to effectively administer the Program over the life of the reserve, which may extend up to approximately 20 years after the last financing is enrolled.

Staff recently learned that the Program will receive ongoing funding designated for the Program's administrative costs through sources other than an administrative fee. Therefore, based on revised estimates of available Program funding, a fee is not necessary to cover the Program's administrative costs at this time. Staff recommends modifications to the Program's administrative fee requirement set out in regulation to provide more cost savings to local PACE programs and property owners wishing to take advantage of PACE financing and help increase the availability of residential PACE financing throughout the state.

**Proposed Modifications to the Regulations.**

Although the Program will receive administrative funding from another source presently, because the availability of the funding is subject to change, staff recommends suspending the administrative fee requirement by adopting amendments to the Program's regulations reducing the administrative fee to zero basis points. The proposed regulations maintain the requirement that the Authority review the fee on an annual basis to ensure the administrative fee can be adjusted if funding availability does change.

Staff also recommends changing the month in which the Authority reviews the fee from March to May. Reviewing the administrative fee in May would provide sufficient time to collect the March semi-annual reports and analyze the information received for consideration when reviewing the administrative fee, and would ensure there is sufficient time to incorporate any administrative fee adjustments, if applicable, in the Program's regulations before the subsequent reporting period begins on July 1st.

The proposed amendments also remove the reference to financings outstanding at the time of enrollment for purposes of clarity because under the proposed regulation, both those financings outstanding at the time of enrollment and those financings enrolled through the semi-annual reports will not be assessed an administrative fee.

Staff recommends emergency regulations amending Section 10085(b) of the Program’s regulations to read as shown below. The proposed modifications are denoted with red strikeout and underlined text. The full text of the Program’s current regulations, including the proposed modifications, can be found in Attachment B.

**§10085. PACE Program Reporting and Administrative Fee.**

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(b) The Authority shall assess an administrative fee of ~~0.0025 (0.25%)~~ 0.0000 (0%) of the principal value of each Financing issued by a Participating PACE Program during the period covered by the report, ~~except those outstanding at the time of enrollment as described in Section 10082.~~ In ~~March~~ May of 2016, and every year thereafter, the Authority shall review the fee. In addition, the Authority may review the fee at any time upon a vote of a majority of the Authority.

....

**Regulatory Process.**

1. Emergency Rulemaking Process.

CAEATFA is granted emergency rulemaking authority under Public Resources Code Section 26009. This authority provides CAEATFA with the ability to make modifications or changes to the regulations in an expedited manner.

The emergency rulemaking process requires CAEATFA to provide notice of the emergency rulemaking action five days prior to submitting the modifications to the Office of Administrative Law (“OAL”) for approval, and provides a five day public comment period. OAL has ten calendar days to review the regulations. Emergency regulations remain in effect for 180 days while Staff completes the regular rulemaking process. The emergency regulations may be readopted for up to two 90-day periods if necessary to complete the regular rulemaking process. Staff must file a certificate of compliance and complete rulemaking file with OAL certifying CAEATFA complied with the regular rulemaking procedures within the required timeframe to prevent the emergency regulations from being repealed.

To ensure the administrative fee requirement is removed from the regulations as quickly as possible, and to help prevent PACE programs from having to submit any unnecessary fees on March 1, 2015, the first administrative fee due date, Staff issued a Notice of Emergency Regulations with the proposed amendments on January 12, 2015, beginning the five day notice period. Upon Board approval, Staff will submit the emergency rulemaking file to OAL for review.

2. Regular Rulemaking Process.

The regular rulemaking process requires CAEATFA to provide notice of the text of the proposed regulations, the Initial Statement of Reasons, and the Notice of Proposed Rulemaking and to publish the Notice of Proposed Rulemaking in the Notice Register. Upon notice and publication, the rulemaking file must remain open for a 45-day public comment period. After the conclusion of the comment period, CAEATFA may hold a public hearing on the proposed regulations. If CAEATFA makes any modifications to the proposed regulations originally made available in its initial notice and publication, CAEATFA must make the proposed modified regulations available to the public for an additional 15-day public comment period. After the 15-day comment period, CAEATFA may adopt the regulations and file the regular rulemaking package with OAL . OAL has 30 business days to review the regulations.

As mentioned above, Staff is currently completing the regular rulemaking process to adopt the initial Program regulations. In order to adopt the emergency regulations proposed herein through the regular rulemaking process, Staff will incorporate the proposed amendments removing the administrative fee in the current regular rulemaking file. To that end, Staff issued a Notice of Modifications to Regulations, opening a 15-day public comment period from January 12, 2015 through January 27, 2015. After the conclusion of the comment period, Staff plans to bring the final proposed regulations to the Board for consideration and approval at the February 17, 2015 Board meeting.

**Tentative Timeline.**

All of the future dates below are tentative and subject to change.

January 12, 2015	Staff issues 5-day Notice of Emergency Regulations.
January 12, 2015	Staff issues Notice of Modified Regulations to be incorporated in current regular rulemaking file. The public may submit written comments for 15 calendar days.
January 20, 2015	Board reviews and approves emergency regulations. Upon Board approval, emergency regulations are submitted to OAL for review.
January 30, 2015	OAL decision deadline, emergency regulations in effect for 180 days.
February 17, 2015	Board reviews and approves final regulations for regular rulemaking file. After Board approval, Staff files certificate of compliance and regular rulemaking file with OAL. OAL has 30 business days to review.

**Recommendation.** Staff recommends adoption of a resolution to approve the proposed modifications to the regulations for the PACE Loss Reserve Program and to authorize Staff to undertake regular and emergency rulemaking proceedings and other actions related to promulgation of the regulations.

Attachments:

- Attachment A February 18, 2014 Staff Summary on PACE Loss Reserve Program (not including attachments)
- Attachment B PACE Loss Reserve Program Regulations

**RESOLUTION OF THE CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION FINANCING AUTHORITY APPROVING REGULATIONS AND AUTHORIZING EMERGENCY AND REGULAR RULEMAKING PROCEEDINGS AND OTHER ACTIONS RELATED THERETO, INCLUDING THE PUBLIC NOTICE AND COMMENT PROCEDURES TO IMPLEMENT THE PACE LOSS RESERVE PROGRAM**

January 20, 2015

WHEREAS, the California Alternative Energy and Advanced Transportation Financing Authority ("Authority") is authorized by California Public Resources Code Section 26009 to adopt regulations to further implement and make specific the statutory provisions governing the Authority; and

WHEREAS, the Authority has determined that amendments to the Authority's regulations relating to its implementation of the PACE Loss Reserve Program (the Program), as authorized in Section 26060 of the Public Resources Code, are necessary to be adopted at this time to implement the Program.

NOW, THEREFORE, BE IT RESOLVED by the California Alternative Energy and Advanced Transportation Financing Authority as follows:

Section 1. The proposed form of Regulations, on file with the Authority, is hereby approved. The Chair, Executive Director and Deputy Executive Director are hereby authorized to file the Regulations, with the supporting documentation required by law, with the Office of Administrative Law as emergency regulations in the form currently on file with the Authority.

Section 2. The Chair, Executive Director and Deputy Executive Director are hereby authorized to proceed with the public notice and comment procedures required by California Rulemaking Law prior to submitting emergency and regular regulations to the Office of Administrative Law.

Section 3. The Chair, Executive Director and Deputy Executive Director of the Authority are hereby authorized to take necessary actions, including making any necessary changes to the Regulations to secure approval by the Office of Administrative Law, and to execute and deliver any and all documents necessary or advisable in order to effectuate the purposes of this resolution.

Section 4. This resolution shall take effect immediately upon its approval.