

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

***Request to Approve Emergency Regulations for the
Residential Energy Efficiency Loan Assistance Program***

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REQUEST

Staff requests approval to adopt modifications to the Residential Energy Efficiency Loan (“REEL”) Assistance Program under the emergency rulemaking process, which will incorporate lessons learned during the first year of implementation and improve program design and operations (“Regulations”).

SUMMARY

On behalf of the California Public Utilities Commission (CPUC), CAEATFA is the administrator of the California Hub for Energy Efficiency Financing (CHEEF) and responsible for launching several energy efficiency financing pilot programs (“pilots”). The pilots were authorized to support the State’s broader energy efficiency and environmental policy goals through leveraging private capital for energy retrofits. REEL is the first of several pilot programs to launch, targeting the single-family residential market. The REEL program mitigates the risk of default for lenders by providing a credit enhancement for enrolled loans. This protection enables participating lenders to offer more attractive financing terms to a broader group of borrowers, including financing 100% of the energy upgrade which removes the first cost barrier for consumers.

On February 17, 2015, the CAEATFA Board approved initial regulations for the REEL Program which were adopted and made effective through the emergency rulemaking process on March 9, 2015. CAEATFA re-adopted the E-regulations twice, on September 8, 2015 and again on December 7, 2015. The CAEATFA Board approved the regulations again in February of 2016 under the regular rulemaking process which was completed on April 13, 2016.

After several years of consultation with stakeholders and a year of official Program operation, CAEATFA staff has identified solutions to several program implementation challenges as well as opportunities for improvement. As of July 31st, 2017, staff have onboarded four active lenders, trained 252 contractor companies (of which 135 are enrolled in the program) and have enrolled 35 loans. CAEATFA staff regularly engages with enrolled contractors and lenders about projects in the pipeline and has held recruitment discussions with several additional potential lenders.

Throughout early program development and implementation CAEATFA has advocated for specific changes to the pilots to broaden their relevance to the private market and to streamline operations for participants. These efforts are necessary, from CAEATFA’s perspective, to facilitate Program uptake. In March of 2016, the California Public Utilities Commission (CPUC) issued Decision 17.03.027 (D.17.03.027) which granted CAEATFA some additional flexibility to modify the REEL Program from previous guidance Decisions. Key areas where the CPUC allowed for modifications include:

- Combining Investor Owned Utility (IOU) Credit Enhancement funds into single accounts to allow for statewide, consolidated Loan Loss Reserve Accounts for lenders and providing a much more valuable credit enhancement for the same overall cost
- Decoupling energy efficiency measure eligibility for financing from the IOU rebate and incentive programs, allowing for a true test of financing as a mechanism to encourage efficiency retrofits and supporting much broader measure eligibility
- Supporting financing measures to code, allowing for additional project uptake

Modifications presented in these regulations stem from both CAEATFA’s newly granted authority to modify the Program as provided under the CPUC, as well additional opportunities for streamlining discovered during the first year of Program operations. CAEATFA plans a phased approach to program modifications, making some early adjustments to gain immediate efficiencies in these regulations, while addressing complex issues that require more stakeholder engagement and staff resources in a subsequent round of modifications. For example, while D.17.03.027 granted CAEATFA complete authority over measure eligibility for the Program, (aka “authority over the EEEMs list”), CAEATFA is broadening measure eligibility in stages. This phased approach will allow us to strike a balance between a simple, streamlined program that is broadly relevant to the market, while ensuring that projects yield energy savings.

CAEATFA posted proposed modified Regulations, held a lender roundtable to solicit input, and conducted a public workshop on July 19, 2017 followed by a 10-day public comment period. Additional modifications to the proposed Regulations were made as a result of discussions with stakeholders during the comment period as well as written comments received.

PROPOSED MODIFICATIONS TO REGULATIONS

Below is a summary of the key proposed changes. The specific modifications to the regulations can be found in Attachment A. Modifications that were presented at CAEATFA’s July 19th public workshop are denoted with ~~strikeout~~ and underlined text. Modifications made subsequent to that workshop are denoted with ~~double strikeout~~ and double underlined text.

§10091.1: Definitions

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

- ~~§10091.1(i):~~ “Credit Enhancement Basis” was added as a new defined term

The addition of this term clarifies how CAEATFA calculates Loan Loss Reserve (LLR) contributions for enrolled lenders. There are no changes as to how the LLR contribution is calculated.

- *§10091.1(kk): “REEL Borrower Form” was added as a defined term*
The addition of this term clarifies the name of a program form that obtains Borrower certifications about energy efficiency projects.
- *§10091.1(j): “Customer Data” was removed as a defined term*
- *§10091.1(k): “Customer Data Release Form” was removed as a defined term*
In order to streamline program operations for contractors, lenders, and borrowers, as well as to reduce operational costs, CAEATFA worked with Energy Division staff of the CPUC to remove the Customer Data Release Form and its associated customer data from the program. CAEATFA and the CPUC concluded that the raw, *energy consumption* data that borrowers consented to provide through this form was 1) burdensome for which to obtain consent 2) expensive to transmit and store and 3) not valuable from a public reporting standpoint. Instead, CAEATFA and the CPUC are working together to figure out how to efficiently share *savings* data from the pilot projects while complying with standards of anonymization and aggregation to protect customer privacy.
- *§10091.1(m): “EEEMs ID” was updated*
The update reflects that CAEATFA, instead of the IOUs, may assign the specific numbers that correspond to an Eligible Energy Efficiency Measure.
- *§10091.1(ff): “IOU Program Holding Account” was renamed as “Program Holding Account”*
- *§10091.1(ii): “IOU Program Reservation Account” was renamed as “Program Reservation Account”*
These changes were made to reflect changes to the Credit Enhancement structure for the program. CPUC Decision 13.03.027 allowed CAEATFA to combine credit enhancement funds from the four IOUs to fund single, statewide LLR accounts for enrolled lenders. The renaming of these accounts reflect the fact that the Program Holding and Reservation Accounts will now combine funds from each of the IOUs.
- *§10091.1(gg): “Qualified Contractor” was renamed as “Participating Contractor” for clarification.*
- *§10091.1(l): “Eligible Energy Efficiency Measures” or “EEEMs” was updated*
The update permits financing of any measure eligible for an IOU rebate or incentive program, assuming the rebate is sought. The update was made to reflect the fact some custom energy retrofit measures do not appear on the EEEMs list, yet contractors are following strict utility requirements designed to yield energy savings. The intent of the program was to provide financing for these projects.

- *§10091.1(r): “Eligible Loan” was updated*
The update qualifies the prohibition on refinancing. Lenders will be permitted to use non-REEL financing products to lend borrowers funds for deposits on energy efficiency equipment (which are sometimes required by contractors) and subsequently use the REEL product to pay off the deposit loan as well as the rest of the cost of installation.
- *§10091.1(s): “Eligible Property” was updated and subsequently updated*
In response to numerous inquiries as to whether mobile and manufactured homes qualify as Eligible Properties, CAEATFA clarified that these homes do qualify, provided that the foundation is permanent and site-built. The text was updated after the public comment period to resolve grammatical issues.
- *§10091.1(aa): “Low-to-Moderate Income” or “LMI” was clarified, though CAEATFA subsequently removed the clarification in response to comments*
CAEATFA clarified the methodology by which enrolled lenders determine household income and household size for the purposes of concluding whether a borrower qualifies as LMI. In response to lender comments about the feasibility of the methodology, CAEATFA removed the clarification from the regulations. CAEATFA plans to reach out to stakeholders to determine a better methodology of LMI determination that yields reliable data while being feasible for program participants. CAEATFA will update this section of regulations in a forthcoming modification.

§10091.2. Eligible Financial Institution and Eligible Finance Lender Applications to Participate.

This section outlines the processes by which an Eligible Financial Institution or Eligible Finance Lender applies to become a Participating Financial Institution (“PFI”) or Participating Finance Lender (“PFL”), describing the information it must provide in its application and responsibilities under the Program. Throughout this document, we use the term “lender” to refer to either PFIs or PFLs.

§10091.2(a)(3-17): Information provided by lenders at the time of application

Requirements for lenders’ applications to the Program were updated to include loan officer contact information to CAEATFA upon enrollment in the program. This facilitates removal of the requirement that lenders provide the contact information upon enrollment of each loan, streamlining their operations. The lender’s description of product fees was updated to remove reference to specific fees, as CAEATFA wishes the lender to disclose all fees. Language was updated to reflect changes in Program forms.

§10091.2(a)(18)(C-D): IOUs as third party beneficiaries and lender indemnifications

Lenders had previously raised concern about language stating that the IOUs may pursue rights against lenders as the IOUs are third party beneficiaries of the lender service agreement that the regulations constitute; this was a flow down provision from the CAEATFA-IOU implementation agreement. CAEATFA worked with the IOU attorneys to strike the problematic provision from

the CAEATFA-IOU contract, and then clarify, separately, that the IOUs are express beneficiaries of the lender's indemnity. The Regulations were changed to reflect this and other language adjustments from the CAEATFA-IOU implementation agreement.

§10091.2(a)(20-21): Lender certifications provided upon application to the Program

Certifications that lenders previously provided at the time of each loan enrollment were incorporated into the lender's application to the Program, such that the certifications could be provided once, and thus streamline loan enrollment and pre-approvals. Following the public workshop, CAEATFA added emphasis to the certification regarding Eligible Loans to clarify that they are for Eligible Improvements at Eligible Properties. Additional erroneous text was struck from the Regulations.

§10091.4. Loan Eligibility and Minimum Underwriting Criteria

This section lays out the criteria a loan must meet to be eligible under the Program. It was designed to safeguard the use of ratepayer funds while maintaining the intent of the pilots to allow lenders the flexibility to broaden access to financing to a wider set of borrowers while mitigating risk.

§10091.4(e)(1): Verification of Borrower's income

Previous regulations required lenders to verify income for borrowers with credit scores below 640. The requirement was modified to apply in cases where borrowers with scores below 640 receive loans greater than \$20,000. The change was made to strike a balance between ensuring that consumers have the means to repay the financing they acquire and streamlining the program to better reflect, and create operational efficiencies with, the underwriting process for higher volume lenders.

§10091.6. Establishment and Funding of Loss Reserve Accounts

This section explains the process by which each lenders' Loss Reserve (LLR) Accounts are established and funded under the Program by CAEATFA's contracted Trustee Bank.

§10091.6(a) and (b) Set-up of LLR accounts and funding upon loan enrollment

Edits were made to facilitate the consolidation of LLR accounts for lenders. CPUC Decision 13.03.027 allowed CAEATFA to combine credit enhancement funds from the four IOUs to fund a single, statewide LLR account for each participating lender. These statewide accounts are much more valuable to lenders as they can use contributions received for any loan enrolled in the Program to cover claims in the event of a default, regardless of where, geographically, that default occurs.

§10091.6(c): Rebalancing of accounts

Previous regulations, developed in consultation with CPUC Energy Division Staff, required CAEATFA to recapture funds from lenders on a quarterly basis, as outstanding loan principal pays down. This requirement has been administratively burdensome for the CHEEF and lenders while yielding little benefit since funds are very unlikely to revolve during a pilot that only allows new loan enrollments for two years. D.13.03.027 allowed CAEATFA to reconsider the methodology for fund rebalancing. This change moves to an annual rebalancing, but preserves

existing methodology. CAEATFA is considering modifying the methodology in a subsequent round of regulation modifications. Staff will continue to monitor this issue to ensure that if the pilots are extended, we retain the flexibility to modify the recapture provision to ensure future sustainability.

§10091.7. Optional Loss Reserve Reservation and Project Pre-Approval

This section lays out an optional reservation and project pre-approval process for lenders. Project pre-approval allows lenders to submit a proposed project to the Authority prior to closing the loan, and receive assurance that the project meets the eligibility requirements of the program. Loss reserve funds are then set aside for the loan’s future enrollment in the Program.

§10091.7(a)-(b) Lender certifications upon Reservation and Pre-Approval submission

Revisions to this section remove certifications from Loss Reserve Reservations and Pre-approvals as those certifications will now be provided only once, upon the lender’s enrollment in the program. This change facilitates streamlining of Pre-Approval submissions.

§10091.7(a)(10) Rebate information and calculation of LLR contribution for Pre-Approvals

Language was added to obtain data about project rebates at the time of enrollment in order to more accurately anticipate the final amount of the likely LLR contribution. The language was subsequently removed by CAEATFA after the public comment period because the information is operationally challenging for the lenders to obtain at the time of Pre-Approval. Lenders will continue to provide information on rebates at the time of loan enrollment.

§10091.7(b)(5) Utility Bill requirements

In response to lender feedback and suggestions, CAEATFA adjusted the requirement that lenders submit a utility bill for the borrower that is current within 60 days of loan *enrollment* to the requirement that the bill be current within 60 days of loan *approval*. Lenders reported that the time lapse between approving credit and project completion were requiring them to ask for updated utility bills, adding additional paperwork to the process and disrupting their desired consumer experience.

Other updates consistent with Program changes discussed above

Language was also updated to reflect the removal of the Customer Data Release form from the program and to support the consolidation of the lenders’ LLR accounts into statewide accounts.

§10091.8. Loan Enrollment

This section describes all of the documentation and data required for a loan to be enrolled into the program, the Authority’s timeframe for reviewing the loan, and LLR contributions for the loan. The section covers documentation provided by the contractor, borrower and lender, though lenders are responsible for compiling and submitting the package.

General changes to support electronic data transfer

Language was added throughout the section to specify that data points will be provided “in a form approved by the authority” to clarify that lenders have flexibility in providing data beyond

CAEATFA’s existing PDF forms; in consultation with CAEATFA, lenders can make use of electronic data or an API (Application Program Interface) exchange.

§10091.8 (c) List of documents for loan enrollment

The Customer Data Release Form was removed as a requirement at loan enrollment. As discussed above, the Customer Data Release Form was burdensome for all program participants and for CAEATFA and the IOUs, while yielding little data of value. CAEATFA and the CPUC are discussing effective ways to share energy savings data with the public while protecting customer privacy.

Language referencing modeling documentation was removed. D.13.03.027 gave CAEATFA flexibility to separate measure requirements for financing from those of the utility rebate and incentive programs. At CAEATFA’s request, the IOUs removed energy savings modeling requirements from the EEEMs portal, thus facilitating more “single measure” energy efficiency projects.

§10091.8 (e) Loan enrollment application data and certifications from Lender

Loan certifications and lender contact information were removed from loan enrollment requirements, as lenders’ applications to the program were changed to collect contact information and certifications up front. This allows for reduction of paperwork and a more streamlined loan enrollment process.

§10091.8(f) Contractor and Borrower Certifications of Completion

Requirements for the Contractor’s certifications were updated to allow Natural Gas Appliance Testing (NGAT), a test that PG&E requires for many of its residential programs to satisfy safety test requirements under the program. Language was modified for grammatical clarity in response to public comment. Other data points related to the safety testing qualifications were updated.

Borrower’s certifications were updated to reflect the fact that the program requires borrowers and/or contractors to obtain permits for work completed, but those permits may still be in process at the time of Loan Enrollment. A slight adjustment was made to language certifying that the use of proceeds is for Eligible Loans, to reflect the fact that borrowers have not yet received loan proceeds at the time they complete their certifications.

§10091.8(g) Itemized Invoice

The Itemized Invoice, another required program form, was updated to include data points important to the CPUC for program evaluation: indication of whether a measure is new or a replacement, indication of whether the installation resulted in a fuel switch for the measure and indication of whether the project added square footage to the house. These data points will have increasing relevance as CAEATFA has removed the IOU’s more stringent rebate and incentive requirements that prohibit installation of new measures or fuel switching.

§10091.8(h) Self-Installer Form

The Self-Installer Form was updated to reflect the fact that the determination for which a measure is available for self-installation is now outlined in §10091.10(c) of these regulations, instead of by the IOUs.

§10091.8(l) LLR determination and contributions

Language was updated to reflect the consolidation of IOU jurisdictional LLR accounts into one, statewide LLR account for lenders. Language was also updated to use the new defined term, “Credit Enhancement Basis,” to describe the LLR calculation.

§10091.9. Claims

This section specifies the process for making a claim reimbursement when a lender charges off an Enrolled Loan.

General changes to reflect the consolidation of LLR accounts.

Language was updated to reflect the consolidation of IOU jurisdictional LLR accounts into single, statewide LLR accounts for lenders. Claims will now be paid out from the lender’s single LLR account, rather than proportionally by the corresponding IOU LLR account. As discussed above, the consolidation of LLR accounts provides lenders with a much more valuable credit enhancement.

§10091.10. Project Requirements

This section describes measure and project eligibility for the Program, safety testing requirements and the Authority’s field verifications and inspections of projects.

§10091.10(b): Removal of specific Finance-Only project requirements

This section had specified that Finance-Only projects (those not receiving an IOU rebate or incentive) still had to follow the IOU’s requirements for self-installation, bundling of measures and modeling. Most of this language is no longer applicable in the wake of decisions made by CAEATFA after receiving authority granted by D.17.03.027 to set measure and project eligibility requirements for the program. While the phrasing in this section that requires Finance-Only projects to obtain a permit is still accurate, the permitting requirement is captured elsewhere in the regulations.

CAEATFA issued its own requirements for self-installer projects, which are detailed in §10091.9(d) and decided to remove the IOU’s rebate and incentive-related bundling (installation of multiple measures) and modeling requirements. CAEATFA made this decision to facilitate broader program uptake and to more accurately test financing as a mechanism by which to encourage uptake of energy efficiency projects. Therefore the previous language, referring to the IOU requirements, was no longer applicable and was struck.

§10091.9(c-d): New criteria for projects available for self-installation

CPUC Decision 17.03.27 gave CAEATFA flexibility in determining measure and project eligibility for financing. This section describes the criteria by which measures are deemed to be eligible for self-installation and thus do not require installation by a Participating Contractor. With a few exceptions, measures must be electric and fall into one of several select categories of appliances. CAEATFA plans to allow borrowers to install their own equipment where it is

prudent to do so and prohibit installation of measures where there are higher risks of safety issues or incorrect installation leading to lack of energy savings.

§10091.10(h): Safety testing

REEL projects, if they include 3 or more EEEMs and are in a household where there is a combustion appliance, previously required a Combustion Appliance Zone (CAZ) or a Combustion Appliance Safety (CAS) test. Language was updated to allow Natural Gas Appliance Testing, a test utilized by PG&E for many of its residential programs, or another industry standard safety test to satisfy the testing requirement.

§ 10091.15. California Hub for Energy Efficiency Financing Disclosure

This section describes the CHEEF Disclosure Form which advises the borrower of their privacy rights under the CHEEF. It informs the borrower that certain information may be shared with the utility companies and other state or federal agencies.

Phone number and release of phone number

Subsequent to posting of the initial proposed modifications, CAEATFA added the requirement that the borrower provide a contact phone number. The disclosure was updated to explain that the phone number will be provided to the CPUC’s Program Evaluation team to invite borrowers to participate in surveys for program evaluation. Surveys and site-visits, where agreed to, are necessary to for the CPUC’s evaluation of the Program. Grammatical and clarifying changes were made following the public comment period.

Information which may be shared

This section was updated to strike a reference to “usernames and passwords” which was flow down language from the prior CAEATFA-IOU implementation agreement. CAEATFA has never come into contact with borrower usernames or passwords. The section was also updated to include “Energy savings data from your project.” While the previous disclosure had referred to “monthly energy use,” CAEATFA wanted to be transparent that data that is ultimately shared (and derived from consumption data) is savings data.

General edits

An edit was made to clarify execution of the form to allow for future electronic transfer.

REGULATORY PROCESS

Tentative Timeline

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

July 19, 2017	REEL Regulations workshop.
July 20 – 27, 2017	REEL Regulations workshop public comment period.
August 15, 2017	CAEATFA Board reviews and approves proposed modifications to the regulations.

August 16, 2017	CAEATFA posts the Finding of Emergency and begins 5-day notice period.
August 23, 2017	Emergency regulations are submitted to Office of Administrative Law (OAL) for review. OAL has 10 calendar days to review the emergency regulations.
August 23 – 27, 2017	Public comment period during OAL review.
September 2, 2017	OAL’s Decision Deadline for adoption of the emergency regulations. Emergency regulations become effective for 90 days upon filing with the Secretary of State.
November 30, 2017	Deadline for filing first 90-day readoption of emergency regulations. First re-adoption becomes effective on this date.
February 27, 2018	Deadline for filing second 90-day readoption of emergency regulations. Second re-adoption becomes effective on this date.
May 25, 2018	Deadline for filing certificate of compliance for regular rulemaking.

RECOMMENDATION

Staff recommends the adoption of a resolution to approve the proposed emergency regulations for the REEL Assistance Program.

Attachment: Attachment A: Proposed Modified Regulations. Modifications for Board consideration are shown with strikethrough and underlined text. Double strikethrough and double underline represent additional modifications made after the workshop and public comment period.

RESOLUTION OF THE CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION FINANCING AUTHORITY APPROVING MODIFICATIONS TO REGULATIONS AND OTHER RELATED ACTIONS TO IMPLEMENT THE RESIDENTIAL ENERGY EFFICIENCY LOAN ASSISTANCE PROGRAM

August 15, 2017

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

WHEREAS, the Authority has determined that, under its Memorandum of Agreement with the California Public Utilities Commission and its contract with the investor-owned utilities to serve as the manager of the California Hub for Energy Efficiency Financing, it is necessary to adopt modifications to the current program regulations to implement the Residential Energy Efficiency Loan Assistance Program (the Program).

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

Section 1. The proposed modified 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 regulations in the form currently on file with the Authority.

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

Section 3. The Chair, and 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.