

**TEXT OF REGULATIONS
CALIFORNIA CODE OF REGULATIONS**

Title 4. Business Regulations

**Division 13. California Alternative Energy and Advanced Transportation
Financing Authority**

CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED
TRANSPORTATION FINANCING AUTHORITY REGULATIONS
IMPLEMENTING

PACE LOSS RESERVE PROGRAM

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* All originally proposed text is in black text. All proposed modifications are in red text. All deletions are illustrated in strikethrough text and additions are illustrated in underlined and italicized text.

ARTICLE 4. PACE LOSS RESERVE PROGRAM

§10080. Definitions.

- (a) “Authority” means the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) established pursuant to Division 16 (commencing with Section 26000) of the Public Resources Code.
- (b) “Executive Director” means the Executive Director of the Authority or his or her designee.
- (c) “~~Loan Financing~~” means ~~a loan issued by, or~~ a contractual assessment or special tax levied by a PACE program.
- (d) “PACE Program” means a residential property assessed clean energy program financing the installation of distributed generation renewable energy sources, electric vehicle charging infrastructure, or energy or water efficiency improvements and established pursuant to:
- (1) Chapter 29 (commencing with Section 5898.10) of Part 3 of Division 7 of the Streets and Highways Code; or,
 - (2) Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code; or,
 - (3) A charter city’s constitutional authority under Section 5 of Article XI of the California Constitution.
- (e) “Program” means the PACE Loss Reserve Program established pursuant to Chapter 4 (commencing with Section 26050) of Division 16 of the Public Resources Code.

Authority: Section 26009, Public Resources Code.

Reference: Sections 26050, 26050.5, 26052, 26055 and 26060, Public Resources Code.

§10081. Application by PACE Program to the PACE Loss Reserve.

A PACE Program seeking to participate in the PACE Loss Reserve Program shall complete an application that shall include the following information:

- (a) The formation documents required pursuant to:
- (1) Streets and Highways Code Sections 5898.20 – 5898.22, and 5898.24; or,

- (2) Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code; or,
 - (3) In the case of a charter city, a copy of a resolution or other document adopted by the city's governing board evidencing approval of the PACE Program.
- (b) If not included in the documentation required in subdivision (a) above, documents showing that the PACE Program requires that property owners can show all of the following as part of the financing underwriting process:
- (1) All property taxes for the assessed property are current for the previous three years or since the current owner acquired the property, whichever period is shorter.
 - (2) The property is not subject to any involuntary lien in excess of \$1,000.
 - (3) The property is not subject to any notices of default.
 - (4) The property owner is not in bankruptcy proceedings.
 - (5) The property owner is current on all mortgage debt.
 - (6) The party seeking financing is the holder of record on the property.
 - (7) The property is within the geographical boundaries of the PACE Program.
 - (8) The ~~Loan~~ Financing is for a residential property of three units or fewer.
 - (9) The ~~Loan~~ Financing is for less than ~~ten percent (10%)~~ fifteen percent (15%) of the value of the property, up to the first seven hundred thousand dollars (\$700,000) of the value of the property, and is for less than ten percent (10%) of the remaining value of the property above seven hundred thousand dollars (\$700,000).
 - (10) The total mortgage-related debt and PACE Financing on the underlying property does not exceed the value of the property.
- (c) If not included in the documentation required in subdivision (a) above, a detailed description of:
- (1) The transactional activities associated with the ~~Loan~~ Financing issuance, including all transactional costs; and,
 - (2) Requirements for quality assurance and consumer protection, as related to achieving efficiency and clean energy production; and,
 - (3) Any credit enhancement or ~~loan~~ insurance associated with the PACE Program.
- (d) A summary of the PACE Program's existing residential ~~financing~~ Financing portfolio certified pursuant to Section 10087 as of the date of application. The summary shall include the following information:
- (1) The total number of ~~Loans~~ Financings in the portfolio.
 - (2) The total value of the portfolio.
- (e) The PACE Program's agreement to permit an audit of any of its records relating to enrolled ~~Loans~~ Financings, during normal business hours on its premises, by the

Authority or its agents, and to supply such other information concerning enrolled LoansFinancings as shall be requested by the Executive Director.

- (f) Upon receipt of a completed application, the Executive Director will within ten business days review and determine whether the application is complete, or whether additional information is required to enroll the PACE Program. The Executive Director's decision whether an application is complete shall be final.

Authority: Section 26009, Public Resources Code.

Reference: Sections 26050, 26050.5, 26052, 26055, 26061, 26062 and 26063, Public Resources Code.

§10082. Coverage of PACE LoanFinancing Portfolios.

- (a) For PACE Programs created before ~~the effective date of these regulations~~ March 10, 2014 and making application pursuant to Section 10081 ~~not more than 90 calendar days after the effective date of these regulations~~ on or before June 9, 2014, all PACE LoansFinancings outstanding at the time of enrollment shall be covered by the loss reserve pool for the length of their term. In addition PACE LoansFinancings originated after enrollment and included in reports as provided in Section 10085 shall be covered by the loss reserve pool for the length of their term.
- (b) For PACE Programs created on or ~~after the effective date of these regulations~~ March 10, 2014, all PACE LoansFinancings originated not more than 30 calendar days before the date of the PACE Program enrollment pursuant to Section 10081 shall be covered by the loss reserve pool for the length of their term. In addition PACE LoansFinancings originated after enrollment and included in reports as provided in Section 10085 shall be covered by the loss reserve pool for the length of their term.

Authority: Section 26009, Public Resources Code.

Reference: Sections 26050, 26050.5, 26052, 26055 and 26060, Public Resources Code.

§10083. Claims Against the Loss Reserve Pool.

Any PACE Program may make claim for payment from the loss reserve pool for the following losses incurred by first mortgage lenders and limited to losses on the LoansFinancings described in Section 10082 directly attributable to the existence of a PACE Program lien on a specified property. Losses include:

- (a) Losses resulting from the first mortgage lender's payment of any PACE assessment paid while in possession of the property subject to the PACE assessment. Losses may also include penalties and interest where they have accrued through no fault of the first mortgage lender.
- (b) In any forced sale for unpaid taxes or special assessments, losses incurred by the first mortgage lender resulting from PACE assessments being paid before the outstanding balance.

In no instance shall the loss exceed the amount of the PACE assessment, or in the case of forced sale for unpaid taxes or special assessments, the amount of the delinquent PACE assessments.

Authority: Section 26009, Public Resources Code.

Reference: Sections 26050, 26050.5, 26052, 26055 and 26060, Public Resources Code.

§10084. Claims Procedure.

- (a) Any PACE Program seeking to make a claim against the loss reserve pool for losses as described in Section 10083 shall submit satisfactory evidence of the eligible loss, including but not limited to the assessor's parcel number, the loss amount, the origination date, the first mortgage lender, the date of the loss or losses, and the certification described in Section 10087. The Authority shall make payments to PACE Programs within 20 calendar days of receipt of a completed claim.
- (b) In the event of an eligible claim on a ~~Loan~~*Financing* where the PACE Program has been terminated pursuant to Section 10086, the Authority may seek additional evidence of the eligible loss from the first mortgage lender.

Authority: Section 26009, Public Resources Code.

Reference: Sections 26050, 26050.5, 26052, 26055 and 26060, Public Resources Code.

§10085. PACE Program Reporting and Administrative Fee.

- (a) Each enrolled PACE Program shall report to the Authority twice each calendar year. These reports shall be certified pursuant to Section 10087.
 - (1) On March 1st of each year, each enrolled PACE Program shall submit the following for the period from July 1 through December 31:

- i. The assessor's parcel number, principal amount, annual assessment amount and term of each new LoanFinancing originated in the reporting period.
 - ii. The total number and value of new LoansFinancings originated in the reporting period.
 - iii. Payment of the administrative fee set forth in paragraph (b) of this section.
- (2) On October 1st of each year, each enrolled PACE program shall submit the following for the period from January 1 through June 30:
 - i. The information and payment outlined in subdivision (a)(1) above.
 - ii. The total number of outstanding LoansFinancings.
 - iii. The total value of the LoanFinancing portfolio.
 - iv. Information on energy and water savings resulting from the projects funded by the covered portfolio of LoansFinancings.
- (b) The Authority shall assess an administrative fee of 0.0025 (0.25%) of the principal value of each LoanFinancing 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. ~~Two years after the effective date of these regulations~~ *In March 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.
- (c) In the event that a report and payment is not received within 60 calendar days of the due date as set forth in this section, the Authority may terminate the PACE Program's enrollment, pursuant to Section 10086(b).

Authority: Section 26009, Public Resources Code.

Reference: Sections 26011, 26050, 26050.5, 26052, 26055, 26060 and 26081, Public Resources Code.

§10086. Termination and Withdrawal from the Program.

- (a) Each enrolled PACE Program may withdraw from the Program after giving written notice to the Authority. The notice shall specify either:
 - (1) That the enrolled PACE Program waives any further interest in the loss reserve pool (including for the reason that all LoansFinancings covered by the loss reserve pool have been repaid); or,
 - (2) That the enrolled PACE Program will not enroll any further ~~financings~~Financings under the Program but shall continue to count on the loss reserve pool to secure all LoansFinancings reported prior to the notice.
- (b) The Executive Director may terminate participation of an enrolled PACE Program in the Program, by notice in writing, upon the occurrence of any of the following:

- (1) Entry of a cease and desist order, regulatory sanction, or any other action against the PACE Program that may impair its ability to participate in the Program; or
- (2) Failure of the enrolled PACE Program to abide by any applicable law, including these regulations; or
- (3) Failure of the enrolled PACE Program to report any LoansFinancings under the Program for a period of one year; or
- (4) Provision of false or misleading information regarding the enrolled PACE Program to the Authority, or failure to provide the Authority with notice of material changes in submitted information regarding the enrolled PACE Program.

In the event of termination, the enrolled PACE Program shall not be authorized to have any further LoansFinancings covered by the loss reserve pool, but all previously enrolled LoansFinancings shall continue to be covered by the loss reserve pool until they are paid, claims are filed, or the enrolled PACE Program withdraws from the Program pursuant to this section.

Authority: Section 26009, Public Resources Code.

Reference: Sections 26050, 26050.5, 26052, 26055 and 26060, Public Resources Code.

§10087. Certification of Reports and Claims.

- (a) All applications, reports and claims submitted by a PACE Program must be signed by the PACE Program administrator certifying that they are accurate and true.
- (b) If an application, report or claim is submitted by a third-party program administrator on behalf of a PACE Program, an appropriate public official must provide the Authority with a signed letter certifying that the PACE Program has the ability to audit the records of the third-party administrator, including all information included in the applications, reports and claims submitted to the Authority.

Authority: Section 26009, Public Resources Code.

Reference: Sections 26050, 26050.5, 26052, 26055 and 26060, Public Resources Code.