



Date: June 8, 2018

To: California Department of Business Oversight

From: California Low-Income Consumer Coalition
California Land Title Association
California/Nevada Credit Union League
California Mortgage Association
California Escrow Association
Consumers Union
Peggy Moak, Butte County Treasurer-Tax Collector

Re: Comments on the Departments of Business Oversight's Proposed Regulations-Article 15. PACE Program Administrators, Sections 1620.01-1620.30

The undersigned organizations appreciate the opportunity to provide input into regulations prepared by the Department regarding the Property Assessed Clean Energy (PACE) program. We note from the outset that the signatories to this letter represent an unusually broad and diverse array of organizations, ranging from consumer advocates to industry trade groups to public officials. Once again, these groups have come together in order to address some of the issues raised by the draft regulations, with a view toward ensuring that the sections of the Business and Professions Code amended by SB 1284 (and SB 242) be liberally construed to promote the statutes' underlying purposes and policies: "To protect borrowers against unfair practices by some lenders, having due regard for the interests of legitimate and scrupulous lenders." (Financial Code § 22001(4).)

Overall, we believe that the purpose of the rules the Department is drafting is to provide reasonable consumer protections so that the PACE program is being utilized to benefit our

communities and specifically the homeowners within those communities. Our specific comments and suggestions are designed to further that purpose.

We commend the Department for its thoughtful and thorough draft and look forward to working with Department staff to finalize these important regulations.

DBO REGS ARTICLE 15. PACE Program Administrators

Sec. 1620.02 Definitions.

(a) “Ability to pay” means the ability of a property owner to pay every PACE assessment on or before the final date to pay the assessment as scheduled, from the property owner’s income, without relying on the equity in a residential property owner’s home.

Comment/Suggestion: The rule should further define what constitutes a property owner’s “ability to pay,” including defining “income” as set forth in Financial Code Sec. 22687.

(b) “Authorized by a program administrator” means that the PACE Solicitor or PACE solicitor agent is enrolled with the program administrator. A PACE solicitor or PACE solicitor agent is also administered by a program administrator if the program administrator funds a home improvement contract of the PACE solicitor.

Comment/Suggestion: The language in this section could be construed to suggest that a program administrator could finance a project with a non-enrolled solicitor. We suggest clarifying the language to state: “Authorized by a program administrator” means that the PACE Solicitor or PACE solicitor agent is enrolled with the program administrator. An assessment contract involving a non-enrolled PACE Solicitor or PACE solicitor agent is void.” We are not sure why the last sentence in this section is included; it does not seem necessary.

(d)(1)(A) “To solicit a property owner” includes, but is not limited to, any of the following:
(A) Taking an application for financing through a PACE assessment.

Comment/Suggestion: The use of the word “taking” is confusing and could lead to multiple interpretations. We suggest rephrasing the definition as follows: “Assisting a property owner in any way to fill out an application for financing through a PACE assessment.”

(d)(2) An individual who includes a PACE assessment in a list of two or more financing options available to a property owner, without providing any information on the program and without recommending the benefits of one financing option over another, does not solicit a

property owner, provided that the individual does not engage in any other activity that constitutes soliciting a property under this subsection (d). The referral of a property owner to an enrolled PACE solicitor agent for information on the PACE program, after two or more financing options are identified, does not constitute solicitation of a property owner.

Comment/Suggestion: The definition will likely create an unintended loophole, removing an individual as a Solicitor if that individual offers PACE with another financing option and does not specifically recommend PACE. It is, unfortunately, easy to imagine that some PACE Solicitors or their agents would simply have a sheet that listed other financing options to attempt to qualify for an exemption under Subsection (d)(2). We suggest deleting the entire section, but at a minimum deleting the final sentence to remove that confusion.

(k) “Extinguishment of a PACE assessment” means the property owner has satisfied all obligations under an assessment contract and no further amount related to the PACE assessment will appear on the property owner’s taxes.

Comment/Suggestion: The provision should be clarified to include other situations in which a PACE assessment may be paid off, such as when a third party or a program administrator pays off the assessment. We suggest changing the language to “‘Extinguishment of a PACE assessment’ means all obligations under a PACE assessment contract have been satisfied or waived and no further amount related to the PACE assessment will appear on the property owner’s Annual Secured Tax Bill.”

Sec. 1620.03 Obligations of Program Administrator.

(a) Every program administrator shall maintain procedures established to ensure sufficient sources of capital to finance the efficiency improvements that it has obligated to finance.

Comment/Suggestion: We suggest removing the words “procedures established to ensure,” so that the provision would read in relevant part “shall maintain sufficient sources of capital”. This change will strengthen the requirement.

(b) Every program administrator implement procedures intended to ensure that each employee who performs a function on behalf of the program administrator under division 7 of the Streets and Highways Code or division 9 of the Financial Code is familiar with the laws, rules, and regulations governing the administration of a PACE program.

Comment/Suggestion: First, a word is missing: the first portion should read “Every program administrator *shall*...” Second, similar to section (a), we suggest removing the words “implement procedures intended to,” so that the section reads, “Every program administrator shall ensure that each employee who performs a function...” Removing the qualifier language strengthens the consumer protections in this section.

(c) A program administrator shall implement a procedure intended to ensure that a property owner has a physical copy of the assessment contract, in the language the assessment contract was negotiated if such language is Spanish, Chinese, Tagalog, Vietnamese or Korean, before the property owner signs the contract.

Comment/Suggestion: Delete the word “intended,” so that the section reads “...implement a procedure to ensure that a property owner...” We make the same suggestion for the remainder of the regulations, in any place where the word “established” or “intended” precedes the phrase “to ensure.”

(d) A program administrator shall implement a procedure intended to ensure that the confirmation of key terms call occurs during a time when the property owner is not physically present with the PACE solicitor or PACE solicitor agent.

Comment/Suggestion: Along with deleting the word “intended,” we see a need to clarify the “key terms.” A reference should be made that the “confirmation of key terms call” refers to the requirement set forth in SB 242; for instance, “...implement a procedure to ensure that the confirmation of key terms call required by SB 242 occurs during a time when the property owner...”

(f) A program administrator shall implement a procedure intended to ensure that if a PACE solicitor or PACE solicitor agent represents that a property owner will achieve any energy savings from an efficiency improvement, then evidence supporting the energy savings representation, and documentation of any actual energy savings, if any, is maintained in the books and records related to the property owner’s assessment contract for the period of time set forth in section 1620.07 of these rules.

Comment/Suggestion: Add a sentence stating “If no energy savings are anticipated, a program administrator shall preserve evidence that the property owner has been informed that it is unlikely there will be any material energy savings as a result of the improvement.” (See Streets & Highway Code § 5913(K)).

Sec. 1620.04 PACE Pricing.

Within 6 months of licensure, a program administrator shall implement a process to track price data for common PACE eligible efficiency improvements and products, including installation costs, labor time, and profit, based on the square foot of residential property obtaining the efficiency improvement, by zip code. The data shall be provided to the Commissioner upon request.

Comment/Suggestion: We suggest removing the phrase “implement a process,” so that the section reads, “administrator shall track price data for common PACE-eligible...” The means by which the program administrator tracks the data is not as important as the fact that the data is actually being tracked.

We also suggest that price data be tracked immediately upon licensure, with no 6-month grace period, and then submitted annually on the anniversary of licensure. As of now, no price data is required until January 2019, which is plenty of time for program administrators to determine how they will track this data. The section would then read, "As of the date of licensure and every year thereafter on the anniversary of the program administrator's licensure, a program administrator shall submit price data..." Requiring the data to be submitted annually, rather than only by the Commissioner's request, would allow the DBO to catch price gouging or other violations or irregularities and would be more likely to prevent long-term abuses by particular contractors or program administrators from occurring.

We suggest that price data tracking be required for *all* items on the program administrator's list of eligible improvements, not just "common PACE eligible efficiency improvements and products." The language would then read, "submit price data for all PACE-eligible efficiency improvements and products..."

We suggest that clarifying language be added to the section so that the price data being tracked is not just what PACE contractors are charging, but what a non-PACE contractor would charge if the consumer were paying cash or utilizing some other financing mechanism, as required by Streets and Highways Code § 5926. We suggest deleting the last sentence based on the above comments, and replacing it with the following sentence: "The price data tracked by the program administrators will include the price a contractor would charge if the property owner were paying cash for the improvements, or utilizing a financing mechanism other than a PACE assessment."

Sec. 1620.06 Mandatory Brochure.

(a) Each program administrator shall provide every property owner a PACE brochure prior to entering into an assessment contract. (1) The program administrator shall obtain the signed acknowledgement of receipt of the brochure from a property owner and maintain evidence of the signed acknowledgement in the program administrator's books and records.

Comment/Suggestion: In section (a), rather than using the vague phrase "prior to entering into an assessment contract," we suggest that the regulations specify when the property owner must receive the brochure prior to entering into the assessment contract. We also suggest adding in a requirement that the brochure is a physical piece of paper given to the property owner, so that the section would read: "...property owner a printed PACE brochure at least seven days prior to entering into a PACE assessment contract."

In our experience, we find many property owners do not understand the documents they are signing when all they are asked to do is provide a signature, particularly when that signature is electronic. One way to address that is to require the property owner to physically write out what it is they are agreeing to do. We suggest the regulations

include language in section (a)(1) that, “at a minimum, the signed acknowledgment will require the property owner to write out on a form provided to the property owner, the phrase ‘I received a printed PACE brochure prior to executing a contract for a PACE assessment, which has informed me that my property taxes will increase and that I risk losing my home if I am unable to pay the assessment contract.’”

Rather than allowing program administrators to develop their own brochures and giving the Commissioner the option of requiring that a standard brochure be used, the regulations should require that program administrators use a brochure created by the DBO, after input and suggestions from stakeholders including consumer advocates regarding the language to include in the brochure. Sections (2) and (3) could then be combined to state: “All program administrators shall use a standard brochure developed by the Commissioner. This brochure may be updated on an annual basis, or as necessitated by changes in the laws or regulations governing assessment contracts.”

(c) The brochure shall include the following information:

Comment/Suggestion: If the Department agrees with the above suggestion that the Commissioner develop a standardized brochure for all program administrators to use, Section (c) may not be necessary, since these requirements could be included in the standardized brochure and would not need to be set out individually in the regulations. However, if the suggestion for a standardized brochure is not implemented, we suggest the following:

For subsection (c)(1), include language that “the assessment contract installment will appear on your next Annual Secured Property Tax Bill.”

For subsection (c)(6), use language clarifying that “tax sale” means loss of home, by including either the term “loss of home” and/or “foreclosure” after “tax sale.”

For subsection (c)(7), the reference to tax “benefits” is potentially misleading and could imply that benefits are expected. It would be more accurate to state: “A recommendation that a property owner consult a tax advisor to determine any potential impact on the property owner’s Federal or State tax liability.”

For subsection (c)(8), clarify what the “minimum eligibility standards” are and where a property owner could find those standards to review. For instance, are those standards codified? Could the property owner find those minimum eligibility standards on the DBO website?

For subsection (c)(10), we suggest combining (B) and (F), so that (B) would read as follows: “An explanation of the difference between the program administrator, the PACE solicitor, and the sponsoring public agency, as well as a clear and prominent explanation that the home improvement contract is an agreement with the PACE solicitor (a private contractor), and is *different* from the assessment contract.”

For subsection (c)(l), further information should be provided: the consumer needs to know not just that there is a potential impact on an impound account, but that, because the assessment will result in increased property taxes, if those taxes are not paid by the property owner the mortgage lender could impose an impound account. An impound account would increase the property owner's monthly mortgage payment and, in the case of a reverse mortgage, a missed property tax payment could result in a default under the mortgage and lead to foreclosure.

Sec. 1620.07 Books and Records.

(b)(18) The records required to be maintained shall, at a minimum, include the following . . .

(18) Advertising

Comment/Suggestion: If the term “Advertising” is not defined, what constitutes “advertising” could be confusing and interpreted differently by different parties. We would suggest clarifying subsection (b)(18) to state what type of advertising is included – all advertising by the program administrator and/or PACE solicitors and/or PACE solicitor agents? Or just advertising by the program administrator itself? We would suggest a more inclusive definition, so that any advertising mentioning the program administrator or one of its programs, whether offered by the program administrator itself, or by a PACE solicitor or PACE solicitor agent, is included in (b)(18).

(c) A program administrator must maintain financial statements in paragraph (1) for three years from the date of preparation.

(d) A program administrator must maintain the records in paragraphs (2), (3), (4), (5), (6), (7), (8), (9), and (10) for three years after the final assessment under the assessment contract is satisfied and extinguished.

(e) A program administrator must maintain agreements with local agencies in paragraph (11) during the term of the agreement plus three years.

(f) A program administrator must maintain records regarding solicitors and solicitor agents in paragraphs (12), (13), (14), (15), (16) and (17) for four years after the PACE solicitor or PACE solicitor agent is no longer enrolled.

(g) A program administrator must keep advertising in paragraph (18) for two years.

(h) A program administrator must keep all current procedures and must keep obsolete procedures for three years after revisions (paragraphs (19), (20), and (21)).

Comment/Suggestion: These provisions provide varying time requirements, from 2 years up to 4 years. In addition, pursuant to Streets and Highway Code section 5913(a)(1)(N)(3), program administrators must keep the recording of the oral confirmation of the “key terms call” for 5 years. For consistency and to eliminate any confusion, we suggest requiring that program administrators keep all records for 5 years. The conditions on the various sections can remain; for instance, for subsection (e), the term can be “the term of the agreement plus 5 years.” The other benefit to

using a 5-year term for all sections is that the program administrator would be maintaining these records for at least the statute of limitations of any cause of action (e.g., breach of contract).

Sec. 1620.08 Complaint processes and Procedures.

General Comment/Suggestion: We suggest that this section be consistent with Streets & Highways Code §5898.17, which, in the pro forma Financing Estimate and Disclosure, states, “In the event you have a consumer complaint, questions about your financing obligation related to the contractual assessment or your contractual rights under this contract, you can contact either this toll-free telephone number or email address provided below and receive a response within 24 hours or one business day. Toll-Free Telephone Number: _____; Customer Service Email Address: _____”

The Department should also provide some guidance to program administrators regarding what appropriate resolutions of complaints might entail. For instance:

If the investigation reveals that the alleged energy efficient improvement was never completed and/or was not completed in a satisfactory and workmanlike manner, the program administrator shall ensure that the improvements are completed in a satisfactory and workmanlike manner, at no additional cost to the property owner.

If it is found that the PACE solicitor or PACE solicitor agent charged the property owner more than they would have charged had the property owner paid in cash, the program administrator shall reimburse the difference between the price actually included in the PACE assessment and the price that should have been charged.

If it is found that there is a fraud or forgery related to the execution of the PACE assessment documents, the program administrator shall ensure that the PACE assessment is fully and permanently cancelled, that it is removed from the property tax rolls, and that any previously paid amounts under the forged or fraudulent assessment are returned to the property owner. The program administrator shall ensure that the property owner has no further financial obligations under the forged or fraudulent assessment.

Furthermore, if the property owner so chooses, they have the ability to bypass the complaint process and pursue their rights and remedies in court or other forum to resolve their dispute.

- (a) Every program administrator shall establish and maintain a complaint process approved by the Commissioner under which a property owner may submit a complaint to the program administrator.

Comment/Suggestion: A best practices suggestion might be to have the Commissioner set forth a complaint procedure that must be followed by all program administrators. While we recognize that different program administrators may use different technology and personnel to deal with consumer complaints, we believe that standardizing the procedure itself would benefit program administrators because there would be no question as to whether their complaint process was “adequate,” and would also benefit consumers because it would provide the opportunity for them to express their concerns and receive resolution of their complaints within a timely fashion.

(a)(2) “Resolution” means the complaint has reached a final conclusion.

Comment/Suggestion: We suggest amending the language to state: “Resolution means that both the program administrator and the property owner agree that the complaint has been satisfactorily resolved.”

(b)(2) The program administrator may accept complaints received by telephone.

(b)(3) If a program administrator does not accept complaints by telephone the program administrator shall implement a procedure intended to ensure that its complaint process provides access to persons unable to submit a complaint in writing or through the internet.

(b)(4) A program administrator shall maintain a toll-free telephone number to answer property owners’ questions and inform property owners on how to submit a written complaint.

Comment/Suggestion: Subsection (b)(2) should require program administrators to accept complaints by telephone, so that the provision reads, “The program administrator shall accept complaints received by telephone and shall maintain a toll-free telephone number to answer property owners’ questions, take complaints and inform property owners on how to submit a written complaint.” To remain consistent with Streets & Highways Code §5898.17, we suggest adding a sentence that reads “The initial response to the complaint shall be within 24 hours or one business day.” Because the property owners who receive many of these assessment contracts are seniors, complaints by telephone are a necessary requirement. Subsections (b)(3) & (4) would then be eliminated.

(c) The program administrator shall develop a form for property owners to submit complaints.

Comment/Suggestion: As suggested above in subsection (a), and also in Section 1620.06(a), we suggest that the Commissioner develop the complaint form for property owners to use and require that the program administrators use the DBO-approved form when taking complaints. Again, this reduces the burden on the program administrators and allows the Department and stakeholders input on the contents of the complaint form.

(e) The program administrator shall maintain a log of all complaints that includes the following information for each complaint:

Comment/Suggestion: The list of information required for the complaint log appears to be incomplete. For instance, the log should include at least the name of any PACE solicitor or PACE solicitor agent involved in the transaction in question. The undersigned are happy to continue working with the Department to develop a complaint form, as well as a suggested complaint log for the program administrators to use.

(f) A program administrator shall provide a complainant with a written response to a complaint that explains the reasons for the program administrator's resolution.

Comment/Suggestion: We suggest revising this section to state: "A program administrator shall provide complainants with a written response to a complaint that explains the reasons for the program administrator's proposed resolution and provides the complainants a period of 30 days to submit additional information or evidence to supplement their complaint if they believe it will alter the proposed resolution." We also suggest that the Department develop an appeals procedure under which the complainant may request that the resolution be reviewed by the Department. Any communication from the program administrator regarding resolution of complaints must include information about the availability of review by the Department and/or the availability of review in the courts or other forum.

(h) The complaint process shall require the program administrator to attempt to resolve complaints regarding PACE financing within 60 days.

Comment/Suggestion: We believe the language here is insufficiently specific and the timeframe for resolution is too long. We suggest revision as follows: "The complaint process shall require the program administrator to resolve complaints regarding PACE financing within 30 calendar days."

(i) The complaint process shall include a requirement for expedited review for complaints involving delinquent assessments, foreclosures, and other imminent harm.

Comment/Suggestion: This subsection is insufficiently specific and may be susceptible of varying interpretations. The provision should specify how quickly "expedited review" must occur. We suggest: "The complaint process shall include a requirement for expedited review, such that the program administrator must provide a proposed resolution within 7 calendar days, for complaints involving delinquent assessments, foreclosures and other imminent harm."

(k) The complaint process shall meet the linguistic and cultural needs of property owners.

Comment/Suggestion: We would suggest that the regulations include the same language as in Section 1620.03(c), so that this subsection specifies that the complaint process must be available in, at a minimum, Spanish, Chinese, Tagalog, Vietnamese or Korean, and that the complaint process will be conducted in the language in which the contract was negotiated.

(l) If the complaint involves an issue of contractor workmanship and the contractor was (or should have been) a PACE solicitor enrolled by the program administrator, the program administrator shall verify all of the following:

Comment/Suggestion: We are concerned that this section does not require sufficient oversight of the PACE solicitors and PACE solicitor agents by the program administrators. Program administrators should be required to review and attempt to resolve complaints involving shoddy workmanship as well as complaints regarding information that was required to be verified prior to work commencing. For instance, Subsection (l)(3) should be revised to read: “The efficiency improvements were completed in a satisfactory and workmanlike manner.” And a subsection (l)(5) should be added that requires that the program administrator verify that the PACE solicitor or PACE solicitor agent did not charge more for the work done under the PACE assessment than it would have charged had the property owner paid cash. Additionally, the program administrator should be required to involve and/or cooperate with the Contractors State Licensing Board on any complaints involving shoddy workmanship, including but not limited to referring a complainant to the CSLB and assisting the investigation by voluntarily providing information requested by the CSLB.

(n) A program administrator shall provide a property owner with records related to the property owner’s assessment contract, and any related complaint records, within 15 days of a request.

Comment/Suggestion: We believe that 15 days is too long a period, and would instead suggest that the time for a program administrator to produce records be 7 calendar days.

Sec. 1620.09 Completion of Work.

General Comment/Suggestion: Include another subsection, after subsection (a), that states: “A program administrator shall independently verify that all energy efficiency improvements financed under the PACE assessment have been completed in a satisfactory and workmanlike manner before making any payment.”

(b) Before providing the final payment on a home improvement contract for property secured by a PACE assessment, a program administrator shall obtain evidence from the PACE solicitor that every building permit required for the efficiency improvements under the home improvement contract has received final approval and been signed by a building inspector, as required by the local jurisdiction.

Comment/Suggestion: We suggest (for clarity) the following edit: “...has received final approval and *has* been signed by a building....”

(c) If the financing is for a solar project that requires permission to operate from a utility company, the program administrator shall confirm that the property owner is able to obtain the necessary permission before providing final payment on the home improvement contract to the PACE solicitor.

Comment/Suggestion: Rather than simply confirm that the property owner “is able to” obtain permission, we suggest that the language read, “... shall confirm that the property owner has obtained the necessary permission....”

Sec. 1620.10 Unfair Business Practices.

(a) The following activities constitute an unfair business practice by a program administrator, under Financial Code 22061

Comment/Suggestion: We believe that the list of activities (1) – (6) is incomplete and that the regulations should specifically emphasize that the list of what constitutes an unfair business practice is not exhaustive. We suggest changing Section (a) to read “The following activities constitute an unfair business practice by a program administrator, under Financial Code 22061. Because an activity is not on the list does not mean it is not an unfair business practice. Subject to proof, other activities could well be shown to be an unfair business practice, as this section is also declarative of existing law, namely Cal Bus. & Prof. Code §17200. We also suggest that the following be added as (7) on the list: “Paying a contractor for any work prior to verifying that all necessary permits and permissions have been obtained.”

(b) A program administrator shall implement policies and procedures intended to ensure that neither a PACE solicitor nor a PACE solicitor agent does any of the following:

Comment/Suggestion: To strengthen the protections, we suggest changing the opening of subsection (b) to state: “A program administrator shall ensure that neither a PACE solicitor nor a PACE solicitor agent does any of the following:”

We also believe that a subsection should be added that states: “Violates any provision of the Contractor State License Law and Home Solicitations Act” to ensure that additional activities not specifically listed here are covered – for instance, non-compliant contracts, not providing a copy of the contract in the language in which it was negotiated, not giving the property owner the three-day right to cancel notice, etc.

(b)(5) Represents to a property owner that a home improvement is energy efficient unless scientific evidence generally accepted in the scientific community establishes the improvement is energy efficient.

Comment/Suggestion: We support the general import of this subsection, but there are some issues with the language. First, the rule needs to define what “energy efficient” means. We suggest: “For purposes of this section, “energy efficient” means the improvement will cause the property owner to see a material decrease in the energy used, and therefore the cost of the property owner’s monthly utility bill(s) will decrease, within 6 months of installation.”

We have concerns about use of the “scientific evidence” standard”. We would suggest deleting that language, and instead providing a definition of “energy efficient” as suggested above. The general language of “scientific evidence” is open to varying interpretation and dispute, and would make this section difficult to monitor and to enforce.

(b)(8) Represents to a property owner that a home improvement that is not an efficiency improvement may be financed through a PACE assessment, or otherwise provided to a property owner who enters into an assessment contract.

Comment/Suggestion: Subsection (b)(8) is incomplete, and the term “efficiency improvement” is unclear. We also believe Section (b)(19) below can be combined with (b)(8) to read: “Represents to a property owner that a home improvement that is not an efficiency improvement may be financed through a PACE assessment, otherwise provides a home improvement that is not eligible for PACE financing to a property owner who enters into an assessment contract or bundles home improvements that are not eligible for PACE financing into the same home improvement contract or PACE assessment contract.”

(b)(18) Charges higher prices for efficiency improvements than the regional market without economic justification.

Comment/Suggestion: We believe overcharging should never be allowed, and that the phrase “without economic justification” should be removed from this section.

(b)(19) Includes home improvements not eligible for PACE financing in an assessment contract.

Comment/Suggestion: We suggest combining Section (b)(19) with (b)(8) as outlined above.

(b)(20) Initiates assessment contracts with more than one PACE administrator on the same property for the same efficiency improvements. This paragraph does not prevent a PACE solicitor or PACE solicitor agent from obtaining financing offers from more than one program administrator on behalf of a property owner, provided that the property owner only enters into one assessment contract to finance the efficiency improvements.

Comment/Suggestion: We suggest a small edit: the first sentence should read, "... more than one *program* administrator on the same..." In addition, rather than using the term "efficiency improvement," we suggest using the language "improvement eligible for PACE financing."

Additionally, subsection (b)(20) could appear to contradict section 1620.10(a)(1), which states that a program administrator shall not disclose the overall amount of financing available to a property owner. We would suggest eliminating the second sentence entirely, since the first sentence is clear as to what is prohibited. We believe simplifying the language to clearly state that only one contract may be entered into for a single efficiency improvement provides enough clarity.

Sec. 1620.11 Solicitor Enrollment Standards or Processes

(b)(2) That the PACE solicitor complies with the laws regarding PACE programs, including those set forth in division 7 of the Streets and Highways Code, division 16 of the Public Resources Code and division 9 of the Financial Code.

Comment/Suggestion: By mentioning only certain laws, subsection (b)(2) potentially suggests a limitation on the laws with which PACE solicitors must comply. We suggest either adding "including but not limited to," and possibly specifically identifying other codes, such as the Contractors State License Law and the Home Solicitations Act.

(b)(3)(K) A PACE solicitor shall maintain all advertising for at least 24 months.

Comment/Suggestion: We suggest clarifying that it is records or exemplars of advertisements that the PACE solicitor must maintain. Further, because of the language suggested above for Section 1620.07 regarding retention of records, we would suggest continued consistency, and require PACE solicitors to maintain all advertising for a period of 5 years from the time the advertisement was published.

(b)(4) A PACE solicitor shall maintain a complaint process that meets the following requirements:

Comment/Suggestion: The requirements for the PACE solicitor complaint process are different from the requirements for the program administrator complaint process. This is confusing for property owners and will likely cause uneven results. We suggest that, rather than setting out a separate procedure for complaints to PACE solicitors, that all complaints regarding home improvements financed through a PACE assessment be referred directly to the program administrator. This will allow one consistent process for all to follow and, as suggested previously, will encourage program administrators to coordinate with the Contractors State Licensing Board when/if the complaint is specifically related to a PACE solicitor or PACE solicitor agent.

(c)(1) A program administrator shall maintain records of the PACE solicitor's complaints and resolutions in the same manner as other books and records under rule 1620.07

Comment/Suggestion: Assuming that the suggestions above for Section 1620.07 (requiring that all books and records to be kept for a period of 5 years) are adopted, this section can remain as is. Otherwise, we suggest specifying in subsection (c)(1) that "A program administrator shall maintain records of the PACE solicitor's complaints and resolutions for a period of 5 years" since this language is consistent with Streets and Highway Code section 5913(a)(1)(N)(3).

Sec. 1620.12 Solicitor Agent Enrolled Standards or Processes.

(b) The process for enrolling a PACE solicitor agent shall include a background check, which may be accomplished through any of the following methods:

Comment/Suggestion: The background check should be conducted on an annual basis. Therefore, section (b) should be revised to read: "The process for enrolling a PACE solicitor agent shall include a background check, including a license check with the Contractors State Licensing Board, and the PACE solicitor agent must clear a background check on an annual basis after enrollment. The background check may be accomplished through any of the following methods:"

(d)(1) A PACE solicitor agent shall complete the introductory training prior to soliciting a property owner to enter into an assessment contract.

Comment/Suggestion: PACE solicitor agents must complete all required training prior to any solicitation activity. Neither Financial Code 22681 nor section 1620.17 should split the training into more than one training. We suggest the word "introductory" be deleted from Subsection (d)(1).

(e) A program administrator may conditionally enroll a PACE solicitor agent if the program administrator complies with the following:

Comment/Suggestion: Section (e) should be deleted; there should be no conditional approvals for PACE solicitor agents. The requirements needed to qualify as a PACE solicitor agent are clearly set out.

Sec. 1620.13 Enrollment Denial.

(a)(1)(A) A clear pattern may be evidenced by more than one complaint regarding the PACE solicitor in the same geographical area that alleges deception, misrepresentation, or omission of a material fact, or where the complaints contain information that suggests a pattern of dishonest business practices.

Comment/Suggestion: We believe the "clear pattern" standard is too loose and believe that the complaints should not be limited to a specific geographical area. We suggest a

more specific minimum standard for what would constitute a “clear pattern,” such as: “A clear pattern may be evidenced by more than one consumer complaint about the PACE solicitor that alleges dishonesty, misrepresentation, or omission of a material fact, or where the complaints contain information that suggests a pattern of dishonest business practices.”

(a)(1)(E) The acts of a PACE solicitor agent acting on behalf of a PACE solicitor shall not be considered when considering whether a clear pattern of consumer complaints is present, if all of the following conditions exist:

Comment/Suggestion: A PACE solicitor should be liable for the acts of a PACE solicitor agent, and if the proper procedures are followed, the issue set forth in subsection (i) should not arise. We suggest the entirety of (a)(1)(E) be deleted. In the alternative, we suggest that subsection (a)(1)(E)(i) be deleted, so that a PACE solicitor agent’s past misconduct is taken into consideration when considering a PACE solicitor for reenrollment.

(a)(2)(A)(iii) The PACE solicitor, or an individual with control over the operations of the PACE solicitor, has, within the last 10 years, been convicted of or pleaded nolo contendere to a crime, or committed an act and been held liable in a civil action, involving dishonesty, fraud, or deceit.

Comment/Suggestion: We suggest that the 10 year period be reduced to 7 years, to conform to the norm in California of criminal convictions and adverse information appearing on consumer reports only for 7 years. We also suggest that the end of Subsection (a)(2)(A)(iii) be revised to state: “...or committed an act involving dishonesty, fraud or deceit and been held liable therefor in a civil action or other proceeding.”

Sec. 1620.15 Periodic Review Standards.

(a)(4) An analysis of whether the PACE solicitor has a clear pattern of consumer complaints about the PACE solicitor regarding dishonesty, misrepresentations, or omissions. For purposes of this review, a clear pattern may be established by more than two complaints about a PACE solicitor in the same geographical area, or where the facts of the complaint indicate deception, misrepresentation, or omission of a material information.

Comment/Suggestion: To align the language of subsection (a)(4) with prior Section 1620.13(a)(1), subsection (a)(4) should be amended to read: “a clear pattern may be established by one or more complaints about a PACE solicitor where the facts of the complaint indicate deception, misrepresentation, or omission of material information.”

(a)(5) An analysis of whether the PACE solicitor has a clear pattern of failing to respond to complaints timely. For purposes of this review, a clear pattern may be established where three or more property owners, or 10 percent or more of the property owners served by the PACE solicitor, in the same geographical area, did not receive a reply to a written complaint, including a complaint received by e-mail, for 90 or more days. Acknowledging receipt of the complaint,

through letter, e-mail, or phone call, shall constitute a reply, provided the PACE solicitor's records indicate the PACE solicitor has actively investigated the matter since receiving the complaint. A clear pattern may also be established where the PACE solicitor fails to record multiple complaints; fails to respond to multiple complainants over a sustained period of time, notwithstanding repeated contact by the complainants; or unreasonably delays the response to, or investigation of, multiple complaints.

Comment/Suggestion: Based on our suggestions above regarding section 1620.11(b)(4), we suggest that all complaints be referred to the program administrator. Implementing that change would require this section to read: "An analysis of whether the PACE solicitor has a clear pattern of failing to resolve complaints timely. For purposes of this review, a clear pattern may be established where three or more property owners, or 10 percent or more of the property owners served by the PACE solicitor, did not have their complaint forwarded to the program administrator within 3 days of receipt by the PACE solicitor, or did not have other complaints resolved within 30 days of receipt by the PACE solicitor. A clear pattern may also be established where the PACE solicitor fails to record multiple complaints; fails to respond to multiple complainants over a sustained period of time notwithstanding repeated contact by the complainants; or unreasonably delays the response to, or investigation of, multiple complaints."

Sec. 1620.17 Education Program.

(f) Every four years a program administrator shall require a PACE solicitor agent to complete a training update which shall include information on recent developments to PACE programs and reminders about practices that constitute unfair business practices under rule 1620.10. The length of the updated training shall not be less than is necessary to provide the updated information and reminders, and a PACE solicitor agent shall receive a certificate upon completion with the date of completion and the identity of all of the program administrators for whom the certificate is applicable.

Comment/Suggestion: The "update training" should be required every two years, as opposed to every four years, to ensure that solicitor agents are current on newer developments and are reminded of applicable business practices and consequences for failure to adhere to those practices. We also suggest that each program administrator require each PACE solicitor agent to submit an annual self-certification stating either that the solicitor agent was not required to enroll in the update training that year, or that the required update training was completed.

Sec. 1620.19 Annual Report Data.

General Comment/Suggestion: The annual report data should be publicly accessible. We propose adding the following language as Subsection (b): "All data reported under this Section will be available to the public, on the DBO website, within 30 days after it is submitted by the program administrators to the Commissioner."

(a) A program administrator shall by March 15 of each year report the following information for activity from the prior calendar year:

Comment/Suggestion: The date by which the data submission must begin is unclear. We propose the following: “A program administrator shall, by October 15, 2019 and on every year thereafter, report the following information for activity from the prior calendar year:” The suggestion to switch from March to October is based on the current operation of the California tax system’s fiscal year, which is what the PACE administrators are already familiar with.

(a)(3) The following additional information:

Comment/Suggestion: The pricing data required to be collected by the program administrator should also be included in the mandatory disclosures. We suggest adding a subsection that states “The information collected by the program administrators under Section 1620.04 – PACE Pricing.”

(a)(3)(A) The number of foreclosure actions on PACE property reported to the program administrator during the prior calendar year. Include the year of the assessment contract, the original amount of the assessment contract, the zip code, the amount owed upon foreclosure, and the amount recovered through foreclosure.

Comment/Suggestion: While we agree that foreclosure information needs to be included in the annual report, the information listed in subsection (a)(3)(A) is insufficient to determine the impact the PACE assessment had on the foreclosure. We would suggest adding to the list of requested specific information to include the following: “Entity foreclosing, date of recording of the Notice of Default, date of recording of the Notice of Trustee’s Sale, and the date of the actual foreclosure sale.”

(a)(3)(I): For assessment contracts entered into the prior calendar year, the total number of assessment contracts with interest rates (1) at or below 2 percent per year; (ii) above 2 percent but at or below 4 percent per year; (iii) above 4 percent but at or below 6 percent per year; (iv) above 6 percent but at or below 8 percent per year; (v) above 8 percent but at or below 10 percent per year; (vi) above 10 percent but at or below 12 percent per year; (vii) above 12 percent but at or below 15 percent per year; (viii) above 15 percent but at or below 20 percent per year; (ix) above 20 percent per year.

Comment/Suggestion: We suggest deleting “entered into the prior calendar year” and replacing it with “added to the tax rolls since the prior reporting period,” because that is a more accurate description of the process that occurs.

We would suggest adding to this section, or including in a separate section, any additional fees or other charges assessed to the property owner that were not included in the interest rate calculation.

(a)(3)(L) The number of PACE assessments that were funded and recorded under the emergency procedures in Financial Code section 22687, subdivision (e), the prior year, by zip code, and the number of HVAC systems, boilers, or other temperature regulation systems funded not in the case of emergency or immediate necessity, by zip code.

Comment/Suggestion: The information reported under Subsection (a)(3)(L) should include all assessments funded and recorded under the emergency procedures, not just those relating to HVAC systems, boilers or temperature regulation systems. We suggest the following revisions: “The number of PACE assessments that were funded and recorded under the emergency procedures in Financial Code 22687, including the type of improvement(s) funded, the cost of improvement(s) funded, and the reason for the emergency. Also, program administrators must provide the number of HVAC systems, boilers, or other temperature regulation systems funded not in the case of emergency or immediate necessity, by zip code.”

(a)(3)(M) For each PACE assessment 12 months or more delinquent on Dec 31 of the prior year, provide the following information.

Comment/Suggestion: Rather than reporting PACE assessments 12 months or more delinquent, we suggest requiring program administrators to report any tax delinquencies after the PACE assessment is recorded, as well as any changes in the payor of the property tax bills after the PACE assessment is recorded. Collecting this information will assist the Commissioner in determining the role the PACE assessment may have played in the tax delinquency, and the possible outcome from the delinquency. We also suggest substituting “after June 30 of the report year” for “on December 31 of the prior year” based on the California tax system’s calendar.

Sec. 1620.20 Underwriting General Standards.

(a) Program administrators shall use forms and documents written in plain English (or the property owner’s primary language) and in a font size and typeface that promote readability.

Comment/Suggestion: The intent should be that the documents provided in the property owner’s primary language are consistent with the requirements in Section 1620.03 and in Cal. Civil Code Section 1632. We suggest adding to the language in the parenthetical as follows: “(...primary language, as required by section 1620.03(c) and Cal. Civ. Code § 1632)”.

(b) A program administrator shall provide a property owner with a copy of the property owner’s application and all forms and documents related to the transaction.

Comment/Suggestion: We suggest adding a deadline. For instance: “Within 7 calendar days after the approval for a PACE assessment, the program administrator shall provide a property owner with a copy of the property owner’s application and documents related to the transaction.”

Sec. 1620.21 Property Owner Protections.

(a) A program administrator shall disclose to a property owner the market value determination at the time of the disclosure of the Financing Estimate and Disclosure in Streets and Highway Code section 5898.17.

Comment/Suggestion: We suggest a requirement that the disclosure be in writing: “A program administrator shall disclose in writing, in the preferred language pursuant to section 1620.03(c) and Cal. Civ Code § 1632, to a property owner...” Rather than just disclosing the market value determination and the Financing Estimate and Disclosure, we propose adding mandatory disclosure of the ability to pay rules and the income verification documents to the property owner.

(c) A program administrator shall not compensate any person involved in determining a property owner’s ability to pay the PACE assessment annual obligations or involved in approving the funding of an assessment contract based on the outcome of any ability to pay or funding decision.

Comment/Suggestion: There is a risk that a PACE solicitor or PACE solicitor agent may receive incentive compensation for approving a particularly high-cost assessment contract. We propose adding a phrase to the end of subsection (c) to prevent incentives rewarding cost inflation or similar conduct, so that the provision reads, “...based on the outcome of any ability to pay determination or funding decision, or on any terms of the assessment contract.”

Sec. 1620.22 Property Owner Income.

(c) In determining a property owner’s current or reasonably expected income, the following principles apply.

(c)(2) A program administrator shall determine that a property owner has a stable and reliable flow of income.

Comment/Suggestion: Because it is important that the property owners’ income be evaluated based on their current income and likely future income, we suggest including the following language in this subsection: “A program administrator shall determine that a property owner has a current stable and reliable flow of income reasonably expected to last for the length of repayment under the PACE assessment. This determination shall be made by verifying a property owner’s income using at least two sources, including but not limited to the sources listed in subdivision (b)(1) of Financial Code section 22687.”

Sec. 1620.23 Other Assets.

(a) A program administrator may rely on a property owner’s assets for the payment of a nonroutine, nonrecurring, or atypical obligation such as the following:

(a)(1) To meet the first payment obligation

(a)(2) To meet a one-time increase in an impound contribution

(a)(3) To maintain a reserve amount available for unexpected income and expense variations.

Comment/Suggestion: Subsection (a) creates a number of problems, including classifying the first payment obligation as a “nonroutine, nonrecurring or atypical obligation,” which it is not. Further, increases in impound contributions will almost always be ongoing, not “one-time.” We suggest deleting all of subsection (a) since we believe it is unnecessary and creates a loophole through which program administrators may also improperly classify other payments as “nonroutine, nonrecurring, or atypical obligations.”

Sec. 1620.24 Basic Household Living Expenses.

In making a reasonable estimate of basic living expenses, a program administrator shall additionally obtain information from a property owner on the property owner’s expenses related to child care payments, medical expenses and caregiving expenses. If the program administrator relies on a recognized standard formula for estimating basic living expenses based on household type and region, the program administrator shall add to the amount the actual expenses of the property owner for child care payments, medical expenses, and caregiving expenses.

Comment/Suggestion: First, as part of the living expenses calculation, program administrators should take into consideration any increased costs to the homeowner as a result of an imposed impound account due to the PACE assessment, particularly because in the first year the impound account contributions could be double the assessment portion of the tax bill in order to have enough accrued for the following year.

Second, the phrase “recognized standard formula” for calculating basic living expenses is problematic, since it is unclear who or what must “recognize” the formula in order for it to be sufficient. And because of the higher cost of living in many parts of California where program administrators operate, most “standard formulas” are inaccurate. For instance, it is generally understood that utilizing the IRS standards for cost of living expenses is insufficient for those residing in Southern California as a result of the higher cost of housing, transportation and other “basic household expenses.” We would suggest requiring the program administrators to collect the actual information for the property owner’s basic living expenses, and ensuring that included in that list are any costs associated with child care payments, medical expenses, caregiving expenses and other costs related to the possible creation of an impound account, if the property owner has a mortgage.

Sec. 1620.25 Emergency.

General Comment/Suggestion: Because of abuses we have seen regarding products being improperly classified under an “other system whose primary function is temperature regulation,” we suggest either including a non-exhaustive list of items that specifically do not qualify under the emergency exception (i.e., cool coat paint, window replacements, cool roof, etc.) or creating a more thorough description of what might qualify under the catch-all provision. For ease of interpretation, we believe it may be easier to list the items that specifically do not qualify.

Sec. 1620.26 Responsible for the Difference.

General Comment/Suggestion: The ability-to-pay determination should occur before an assessment contract is executed. It is difficult to see its value otherwise.

If the Department does not adopt an underwriting timeline that is in accord with this principle, and the amount financed by the property owner is greater than the amount the property owner is ultimately determined to be able to pay, then the homeowner should be given an opportunity to cancel the assessment contract. At the very least, if the assessment contract is not cancelled in these circumstances, it must be modified to reduce the property owner’s annual PACE payment obligation throughout the financing term to the ability-to-pay amount before it is funded or recorded, and before the homeowner is charged any fees, interests, or other costs. Moreover, the property owner should not be charged for any additional recording or other fees as a result of the modified assessment contract.

A program administrator should not be permitted simply to pay the homeowner directly for the “amount of the difference” between the annual cost of the PACE assessment and the cost the property owner is determined able to pay; instead, the assessment contract must also be reduced so that the property owner’s annual PACE payment obligation throughout the financing term is the ability-to-pay amount. Otherwise, the property owner may be charged additional fees and interest she should not be responsible for throughout the financing term. Further, low-income property owners should not be put in the position of having to save a lump-sum program administrator payment and then remit it over a term of up to 20 years. Finally, homeowners should never have to worry about tax consequences of such payments, or be required to consult tax professionals that they cannot afford.

Critically, a property owner must not be held responsible for any difference between the amount of the modified assessment contract and the amount the property owner is obligated to pay under the home improvement contract that is being financed by PACE. That is, the program administrator must be responsible for paying the contractor for the difference between the determination of a property owner’s ability to pay the annual PACE obligations and the amount of the home improvement contract so that the

property owner is never at risk of collection by the contractor or of foreclosure via a mechanic's lien.

Sec. 1620.27 Automated Valuation Model.

The department should require a full appraisal where adequate confidence scores cannot be obtained.

Sec. 1620.29 Commercially Reasonable.

(e) Where information was not reasonably available through an independent source, the verification relied on the representation of the property owner.

Comment/Suggestion: Reliance on the representations of the property owner as to the valuation of the property is not "commercially reasonable" and should not be construed as such. We suggest subsection (e) be deleted, since leaving it in could provide an opening for a PACE solicitor to ignore the other subsections and rely more heavily on a property owner's valuation.

Sec. 1620.30 Application for a Program Administrator License.

(a) A program administrator shall provide the general information required by section 1422 of these rules for a license under the California Financing Law, except that a program administrator shall not provide the information related to lending or brokering a loan.

Comment/Suggestion: We propose that the last phrase of subdivision (a) be deleted, so that the section ends at "...under the California Financing Law." Including the exception for lending or brokering a loan is contradictory to the entirety of these rules, which repeatedly refer to a PACE assessment as "PACE financing."

In closing, the undersigned wish again to express our gratitude to the Department for the work it has already done in drafting these regulations on an expedited timeline. We look forward to continuing to work with Department staff in finalizing the rules in furtherance of the new statutes' purpose of protecting consumers and ensuring fairness to all stakeholders.

Sincerely,

California Low-Income Consumer Coalition
California Land Title Association
California/Nevada Credit Union League
California Mortgage Association
California Escrow Association
Consumers Union
Peggy Moak, Butte County Treasurer-Tax Collector