



January 9, 2018

The Honorable Jan Lynn Owen
Commissioner, Department of Business Oversight
1515 K Street, Suite 200
Sacramento, CA 95814

RE: Comments on Proposed PACE-related Rulemaking

Dear Commissioner Owen,

On behalf of the California Association of County Treasurers and Tax Collectors (CACTTC), I write to lend our support to many provisions included in the letter sent to you by the coalition of consumer advocacy groups, lending institutions, and relators that outlined many critical suggestions for consideration in developing regulations for PACE.

In particular, of the numerous suggestions made to the Department of Business Oversight, CACTTC wishes to highlight the following, which we believe are critical to ensure that future PACE lending works for the local government departments that PACE lending affects.

1. The models used in the process of property value determination need to be updated. You must ensure that automated valuation models are based on industry standard models, not on internally-developed models.
2. Additionally the ability to repay determination from the PACE administration must determine if the property owner can afford the repayment of the PACE financing before any contract is signed or any work is done. In order to make this determination more accurate any forms that need to be filled out by the homeowner should be written in simple, easy to understand language with a readable typeface.
3. Program administrators must be required to use multiple records to verify the past 60 days of income, and then base their determination on a projection of the property owner's next 30 days of income. Clear standards determining household expenses that account for reverse mortgages, medical and caregiving expenses, and childcare payments are needed.

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The ability to pay analysis should not include the homeowners projected savings or potential to save through participating in PACE. PACE administrators should also be barred from utilizing a "reasonable estimation" of expenses when the actual expenses are either publically available or documented by the property owner.

4. In order to prevent abuse a strict definition of "other system whose primary function is temperature regulation" is needed in Fin. Code § 22687(e)(4) – "emergency or immediate necessity" to prevent this provision from becoming a loophole in the ability to repay requirement. The "system" must be something that will impact the property owner's health or safety.
5. All annual reports filed by PACE administrators should be required to include the following information:
 - All complaints about assessments, lenders, and licensees.
 - The number and names of contractors disciplined or removed from the program.
 - The interest rates that were charged.
 - A list of properties with PACE assessments where the taxpayer is in delinquent and/or default status.
 - The zip codes and/or census tracts of properties by which PACE funding is secured.
 - The numbers of project items funded (to track solar power v. cool coat paint vs. windows, etc.)
 - The number of PACE-driven foreclosure proceedings.
 - The amount of money paid out by PACE administrators in any settlement of complaints.
6. All financial disclosures to homeowners need to include TILA-level disclosure of finance charges and be in plain English. All terms of repayment should require an item-by-item disclosure of the expected life of each product financed through a PACE assessment, and that "expected life" should be based on an accepted definition that includes a reasonableness standard.



7. The DBO should provide a specific, non-exclusive list of all activities that will be considered a violation of Fin. Code § 22161 including:
 - Representing that a PACE assessment can be repaid once taxes are filed.
 - Representing that the program is a “free” government program.
 - Representing that tax credits or tax deductions might apply or be otherwise available.
 - Leading the property owner to believe that they will be liable for paying an amount less than the full assessment plus interest and fees.
 - Representing that the program obligations will transfer to the buyer in the event of the property being sold.
8. Home improvement contractors and PACE solicitors should be required to provide a DBO approved brochure disclosing the following in a manner likely to be read and understood:
 - The impact on the homeowner’s property taxes, including the inability to pay monthly at the tax collector’s office in most counties.
 - The potential requirement to pay off the PACE assessment if selling or refinancing the subject property.
 - A statement that the property owner should consult a tax advisor to determine whether the energy-related improvement provides any tax benefits.
 - The potential eligibility standards necessary to qualify for a PACE loan, in list form, including (among others) ability to pay, available equity, and the maximum % of property value allowed for financing a PACE project).
 - Other potentially available methods of covering the cost of the PACE project that consumers can look into, including savings, a home equity line of credit, or refinance of an existing home loan.
 - A prominent statement in at least 20-point font: “This is not a government-funded program. Any improvements made will be paid by the consumer on the property tax bill.”
 - A statement that it is up to the consumer to compare contractor pricing and services for the PACE project; that there are many companies that are offering similar services and prices may vary.
 - A recommendation to verify that the contractor has a current license from the Contractors’ Licensing Board.



- A reference to the DBO consumer complaint process that property owners can access if they have issues with the PACE solicitor, the home improvement contractor, or the PACE administrator.
- 9. Additionally the DBO website should include a directory of the contact information of each program administrator as well as a publically available monthly tracking of complaints by PACE administrator and contractor. The DBO should also require program administrators to use a real-time registry or database system in order to mitigate the possibility of a homeowner being approved by multiple PACE administrators in a short time span. Capitalized interest should not be allowed past 18 months, and program administrators should not be allowed to use misleading "subordination agreements". PACE administrators and contractors should also be prohibited from using or appearing to use government phone numbers or suggest that they are affiliated with a part of the county or city government.

On behalf of CACTTC, thank you for your consideration of our concerns and we look forward to being a steady and engaged partner as this process moves forward.

Sincerely,

Sandie Arnott

San Mateo County Treasurer-Tax Collector

President, California Association of County Treasurers and Tax Collectors

Enclosure

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December 4, 2017

Department of Business Oversight, Legal Division
Attn: Mark Dyer, Regulations Coordinator
1515 K Street, Suite 200
Sacramento, CA 95814-4052

Via email: regulations@dbo.ca.gov
cc: colleen.monahan@dbo.ca.gov

Re: ***In Consideration of Regulations to Implement AB 1284 (Dababneh, 2017).***

Dear Ms. Monahan,

Please find below comments for your deliberations as you prepare draft provisions of the new PACE regulatory construct per AB 1284 (Dababneh, 2017.)

Application information to be submitted

- Start with a standard loan application to be consistent with lending industry standards.
- Ensure monthly income and sources are clearly delineated, with enough spaces to fill in several different sources and amounts
- A listing of all debts and monthly payments
- Include current property tax and insurance payments, child support, alimony, school loans
- Consider Ability to Pay analysis on the application that the property owner actually completes – it might allow them an opportunity to self-determine whether or not they can afford the payments

Annual Report data to be collected and submitted

- Obtain Reports on both a per Administrator basis, and a compilation of data for all PACE Administrators
- Be able to sort data using various data points
- Existing Mortgage (Yes/No)
- Loan to value estimate after PACE loan issuance
- Age of primary borrower
- Zip Code
- City/County
- \$ amount of annual PACE assessment
- Number of PACE assessment contracts issued in the current year and cumulative total number
- Term of each PACE loan
- APR of each PACE loan
- Amount of Capitalized interest for each loan
- Number of delinquent first installments with PACE assessments
- Number of Defaulted first year PACE assessments after fiscal year end (June 30)

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- Number of violations and consumer complaints (gross number; no unreported "settlements")

Advertising standards

We recommend a DBO approved standard brochure be provided to all PACE applicants by solicitors and/or contractors that provides disclosures as to:

- the impact on property taxes, including inability to pay monthly at the tax collector's office for most counties
- potential requirement to pay off the PACE assessment if selling or refinancing the subject property
- Disclaimer that property owner should consult a tax advisor to determine whether any tax benefits exist based on the energy related improvement
- Meeting certain eligibility standards in order to qualify for a PACE loan, and list those standards (ability to pay, available equity, maximum % of property value allowed for financing PACE project, etc.)
- Listing other possible considerations for covering the cost of the PACE project that consumers should look into: Savings, Home Equity Loan, Refinance of existing Home Loan
- A disclaimer that, although PACE loan payments are direct charges on their property tax bill, PACE is NOT a "County" or "City" sponsored program, in most cases
- In 20 point font: "This is not a government-funded program. Any improvements made will be paid by the consumer on the property tax bill."
- Disclaimer that it is up to the consumer to compare contractor pricing and services for the PACE project; that there are many companies that are offering similar services and pricing may vary
- Verify the contractor has a current license from the Contractors' Licensing Board
- Include a reference to the Consumer Hotline that they can call if they have issues with the solicitor, the contractor, or the PACE Administrator.
- Require that the consumer sign an acknowledgement that they have read and understand the information in the brochure and that this is part of the loan application process.

Books and records: information to be retained, such as financial records, assessment records, agreements, complaints

- We recommend the same rules as for existing consumer and real estate loans to remain consistent and avoid confusion
- Provide for DBO and/or authorizing government agency to conduct audits as determined necessary and appropriate.

Clarifications of AB 1284

Complaint processes and procedures

- Recommend a PACE Consumer Hotline that would also act as a referral point for borrowers wanting information from PACE Administrators on their loans (payoff amount, etc.) or from County Tax Collectors on tax payment procedures. This service should be funded by PACE Administrators but overseen by the DBO
- Require monthly reported tracking of complaints by PACE Administrator and Contractor on the DBO Website so the information can be readily obtained by consumers and counties/cities

Deceptive acts or practices

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End the practice of allowing capitalized interest past 18 months. Some PACE Administrators or contractors are offering "no payments for 24 or even 36 months" This really adds to the overall cost of the project as interest continues to accrue and is capitalized into the agreement, accordingly.

- Require a Good Faith Estimate of financing costs up front, along with the disclosure brochure that is given out at the initial presentation by the solicitor or contractor; customer must sign the acknowledgement of receipt
- Require use of IRS code or some other standard methodology to establish "useful life" standards, and not allow financing to go beyond that time
- Address the issue of when the assessment needs to be recorded:
 - we recommend recording the lien immediately after the 3 day right of rescission period has ended (after the doc signing)
 - the assessment would not be placed on the tax bill until the work has been completed

Periodic PACE Administrator review of participating contractors (standards)

- Review should be at least annually, immediately and quarterly if complaints have been made by consumers
- Consider probationary period for new contractors, requiring a review of their practices and their work

Solicitor enrollment standards or processes

- Training should be required, including fair business practices and admonitions about false or misleading advertising

Solicitor monitoring standards

- PACE Administrator should have a set of solicitor and contractor related "customer service" type questions that they ask of the homeowner when they do the verbal review of the terms of the agreement as required by AB242, and track the responses
- Standards should be set for performance reports that are acceptable, needs more training and disenrollment as a solicitor
- Citizens need to be able to report poor or deceptive solicitation practices – Consumer Hot Line?

Processes for canceling enrollment and notifying department

- No comments

Training program standards or processes

- Recommend emphasis on appropriate qualification of applicants, appropriate upfront disclosures, importance of consumer protection

Underwriting clarifications, if necessary

- Independent verification of stated income
- What will the formula be for determining Ability-to-Pay? Needs to be consistent, straightforward, with reasonable "cushion" of unexpended monthly income

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- Independent verification of payment record for mortgage
- How do they know if there are liens against the property if there is no prelim title report? Self-disclosure on the part of the consumer?
- Ditto for bankruptcy
- Criteria for acceptable validation of appraised value [Jenine to provide info]
- Emphasize 15% max of appraised value max for PACE Lien (total amount of repayment), and 96% max total loan-to-value. (Note: Max allowed above is reduced for properties with value of \$750K or more).

On behalf of CACTTC, thank you for your consideration of our concerns and we look forward to being a stead and engaged partner as this process moves forward.

Sincerely,



Karen Lange

Legislative Advocate

California Association of County Treasurers and Tax Collectors

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