



May 23, 2018

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

Dear Commissioner Owen and Mr. Dyer,

The recent PACE laws signed by Governor Brown were very positive developments for continued growth and improvement of the industry and will help minimize some of the practices that have led to criticism of the PACE industry. We believe that the Department of Business Oversight will play a very important role as the regulatory body to oversee PACE and ensure enforcement of the new PACE laws.

We had an opportunity to review the recently released draft document "Text of Regulations, California Code of Regulations, Title 10, Chapter 3, Subchapter 6" and agree with most of the specific provisions and language with some exceptions which appear to go beyond the spirit and letter of the law and could easily make PACE financing the choice of last resort for contractors (solicitors). It would be unfortunate if some of these requirements unintentionally force stakeholders to choose other forms of financing which have fewer consumer protections. Some of the suggested regulations place tougher restrictions on PACE credit applications than the same property owner would be required to provide for a mortgage application.

Below are our specific concerns:

§ 1620.03. Obligations of Program Administrator.

(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.

PFG comment: The use of physical copies is contrary to our company's goals of maximizing the use of technology to improve user experience and reduce the impact of business processes on the environment. We believe that secure, verified electronic documents are superior to physical documents for avoidance of fraud and reduced destruction of natural resources.



PFG Comment: We recommend a disclosure which states the property owner has the right to receive a physical copy, but unless specifically requested, property owner will receive an electronic copy for his/her records.

(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.

PFG Comment: Although we understand the rationale for not wanting a solicitor agent to be present during the call, from a practical stand point, it will be impossible to "ensure" that the solicitor agent has left the room when the call is in progress.

(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.

PFG comment: We recommend that the program administrator be allowed or required to state both in a disclosure which is initialed by the property owner and then verbally during the term confirmation call that neither the solicitor nor the program administrator can guarantee any energy or water savings.

§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.

PFG comment: We strongly recommend that the solicitor should not be required to break out the equipment cost, labor cost, overhead cost and profit for each project. This requirement would be overly burdensome to both solicitors and program administrators, with no tangible benefit.

§ 1620.05. Advertising Standards.

(10) (b) A program administrator shall develop and implement policies and procedures intended to ensure that a PACE solicitor or PACE solicitor agent does not lead a property owner to believe that that the PACE solicitor or PACE solicitor agent has been **certified** to provide efficiency improvements under any PACE program.

PFG Comment: Under 1620.17, solicitors and solicitor agents are required to receive a certificate after passing a training program. We believe that solicitors should be able to



represent that they received our certification. This section implies that the solicitor or solicitor agent cannot show the certification to the property owner.

§ 1620.06. Mandatory Brochure.

(a) Each program administrator shall provide every property owner a PACE **brochure** prior to entering into an assessment contract.

PFG comment: We have no issues with the requirement of a brochure as long as such brochure can be produced, delivered and receipt acknowledged electronically. An electronic document with validated property owner signature should be allowed to meet this requirement.

(10) (C) A homeowner may choose **any** licensed contractor or retailer to provide the property improvement and products.

PFG comment: This section seems inconsistent with the requirement that a program administrator must thoroughly vet and train each solicitor and solicitor agent. What happens if the customer chooses a contractor that has either not yet applied to be a solicitor or one that has been specifically declined or terminated? We recommend including "any licensed and PACE certified contractor or retailer".

§ 1620.09. Completion of Work.

(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.

(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.

PFG comment: These requirements would make PACE very unattractive to contractors (solicitors) relative to other forms of financing available in the marketplace that have far fewer consumer protections. We believe that solicitors can and should be terminated if they do not provide permit and permission-to-operate documents in a timely manner, but these documents should not prevent the funding of a project.



§ 1620.10. Unfair Business Practices.

(b) (6) Represents to a property owner that a PACE assessment will result in a tax credit or tax benefit.

PFG comment: We find that many professional tax preparers are still not familiar with the tax treatment of PACE. We believe that program administrators and solicitors should be allowed to send property owners unaltered IRS documents and links (such as <https://www.irs.gov/taxtopics/tc503.html>) so that the property owner has useful information to provide to his/her tax professional. Therefore, we recommend that this section be reworded to read: "Provides any tax advice to property owners beyond direct, unaltered IRS documents and links."

§ 1620.11. Solicitor Enrollment Standards or Processes.

(D) A PACE solicitor may not begin work on a home improvement contract until the three-day right to cancel has passed.

(E) A PACE solicitor shall ensure a property owner receives a confirmation of key terms call prior to proceeding with work under a home improvement contract.

PFG comment: We believe that a contractor should have the right to begin construction subject to contractor licensing laws so long as the solicitor bears all risk if the property owner chooses to cancel the PACE assessment and is unable to find other forms of financing or if the program administrator is never able to complete the key term confirmation call to the satisfaction of the program administrator.

§ 1620.13. Enrollment Denial.

(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.

(v) The PACE solicitor has a disciplinary action against it by another regulatory agency for fraud, misrepresentation, or deceit.

(vi) The PACE solicitor has engaged in elder abuse or vulnerable population abuse.

PFG comment: The solicitor's status with the CSLB and the status within a DBO database of registered PACE solicitors be sufficient for a background check.



§ 1620.15. Periodic Review Standards.

(12) An analysis of whether the PACE solicitor provides a different price for a project financed by a PACE assessment than the contractor would provide if paid in cash by the property owner.

(13) An analysis of whether the PACE solicitor commences work under home improvement contracts prior to the expiration of the right to cancel period set forth in subdivision (b) of Streets and Highways Code section 5897.16.

(14) (1) The review shall include an analysis of whether the PACE solicitor is only using PACE financing for authorized efficiency improvements.

PFG comment: It is difficult to understand what would meet these requirements. Would questions to the property owner in the term confirmation call on these subjects suffice? Would questions to the property owner upon completion of the project suffice?

§ 1620.19. Annual Report Data.

(3) (H) The title changes for properties with PACE assessments during the prior year that did not result in the payoff of an assessment contract.

PFG comment: This data might be difficult to track. PACE program administrators are not currently notified of title changes.

§ 1620.21. Property Owner Protections.

(b) A program administrator shall implement and maintain a firewall between the persons making the good faith determination that the property owner has a reasonable ability to pay the annual payment obligations for a PACE assessment and the following:

- (1) The persons making the determination on whether to approve funding.
- (2) PACE solicitors and PACE solicitor agents participating in the transaction.
- (3) Information on the status of any other part of the assessment contract application or the home improvement contract.

(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.



PFG comments: We agree with the spirit of subsection (c) that the underwriter who is making a determination of the property owner's ability pay should not receive any compensation that is tied to approving property owners, setting ability to pay limits or funded transactions. It would, however, be very burdensome operationally to restrict the underwriter who is making the ability to pay decision to not work on the project in any other way. In the mortgage business, there is a funder and an underwriter, they work together. The underwriter makes the final decision whether to fund or not. Furthermore, underwriters making ability to pay determinations will often have to communicate with a solicitor agent to clarify what type of income documentation is acceptable. We strongly recommend subsections (1) and (2) be removed.

§ 1620.22. Property Owner Income.

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

(3) A program administrator should ordinarily request records that reflect two years of income.

PFG comment: Typically, a self-employed person only has to provide one year's tax return. Additionally, program administrators should be allowed to use rely on verified data about actual payments from employers, tax returns bank statements without receiving the documents themselves.

(A) A program administrator may make a reasonable good faith determination that a property owner has a reasonable ability to pay the annual payment obligations without records of two years of income if factors suggest the determination may be made with other records establishing a stable and reliable flow of income.

PFG comment: For a W-2 employee, we strongly recommend rewording to this section to include: "Current Payment documents from an employer (e.g. recent paystub or proof of consistent bank deposits) or benefit statements for social security or pension income shall meet the requirement of suggesting stable and reliable flow of income."

For a self-employed person, we suggest one year's tax return (most recent filed) rather than two years. This matches the requirement for a traditional mortgage for a self - employed person with 5 years' experience.

(4) Temporary sources of income are sources that are expected to end within three years, and should not be included in determining income.

(5) Rental income may be included in determining income if the property is other than the residence of the property owner, and records establish that the property has been continuously rented for two or more years.



PFG comment: For a traditional first mortgage, generally only the most recent tax return is required to document rental income (not two years). Also, many property owners rent out rooms in their primary residence as a source of income. We believe that PACE should not discriminate against such property owners and they should be able to declare such income. We strongly recommend that subsection (5) be removed.

§ 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 size 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.

PFG comment; We believe that the legislation was very deliberate, thorough and precise when dictating which expenses should be included in cost of living calculations. These items were explicitly and purposefully excluded from the legislation. We believe that this section should be removed.

For a traditional first mortgage, alimony, child support, or separate maintenance income need not be revealed if the homeowner does not choose to have it considered for qualification purposes. For a traditional mortgage, care-giving and medical expenses are not considered. It would seem unfair to burden PACE applicants and program administrators with this requirement.

Thank you for the opportunity to submit our comments to the proposed rules. We look forward to meeting with you to review our recommendations in more detail.

Sincerely,

A handwritten signature in blue ink that reads "Robert Giles".

Robert Giles
CEO
PACE Funding Group, LLC