Comments of the

National Consumer Law Center
(on behalf of its low-income clients)

and

National Housing Law Project

to the

California Department of Business Oversight

Regarding Proposed Rulemaking Implementation of AB 1284

January 5, 2018

Thank you for the opportunity to comment on the proposed rulemaking implementation of AB 1284 for Property Assessed Clean Energy (PACE) loans. The National Consumer Law Center[1] submits these comments on behalf of its low income clients with the National Housing Law Project.[2] We also support the recommendations submitted by Bet Tzedek Legal Services and the California Low-Income Consumer Coalition.

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[1] The **National Consumer Law Center, Inc. (NCLC)** is a non-profit Massachusetts corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of practice treatises on consumer credit laws and unfair and deceptive practices. NCLC attorneys regularly testify in Congress and provide comprehensive comments to the federal agencies on consumer regulations.

[2] The **National Housing Law Project (NHLP)** is a non-profit law and advocacy center established in 1968 and based in San Francisco, California. NHLP is dedicated to advancing housing justice by using the power of the law to increase and preserve the supply of decent affordable housing, improve existing housing conditions, expand and enforce low-income tenants' and homeowners' rights, and increase opportunities for racial and ethnic minorities. Among other activities, NHLP provides free technical assistance, case consultations, litigation support, trainings and practice resources for legal services attorneys and other advocates representing homeowners in connection with residential lending, foreclosures and loss mitigation.

These comments are focused on implementing the provisions of AB 1284. They should not be taken as a comprehensive list of the protections or ability-to-repay requirements that should apply to PACE loans.

A. DBO should adopt regulations to implement the ability-to-repay provisions of AB 1284.

In 2010, following the worst financial crisis since the Great Depression, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act. The ability-to-repay (ATR) provisions of the Dodd-Frank Act responded to the widespread origination of mortgages by lenders using shoddy or even fraudulent underwriting practices. Loans were made based on borrowers' home equity without due consideration of their ability to repay, fueled by lines of credit made available to lenders by Wall Street securitizers.[3] Lenders "lost sight of the basic tenets of underwriting and risk."[4]

PACE loans in California, which do not follow mortgage rules, have shown many of the same unsustainable attributes found in mortgages made before the mortgage foreclosure crisis. Unaffordable PACE loans have been made to low-income homeowners on fixed incomes relying largely on home equity with little consideration of the homeowner's ability to pay the additional property taxes. Similar to subprime mortgages, PACE loans typically carry interest rates that are high for home-secured lending, with annual percentage rates of 8 to 11% despite being virtually risk-free for investors due to the first-lien position. Problems with high cost and unaffordability are compounded by the tax assessment structure in which PACE borrowers are charged additional interest, at a rate of 18% annually, if they become delinquent in payment of the PACE assessment. Many of the consumer stories about PACE abuses that we have received from homeowner advocates in California involve homeowners who do not have an ability to repay the PACE assessment.[5]

To implement the ATR requirements of the Dodd-Frank Act, the Consumer Financial Protection Bureau (CFPB) adopted the ATR rule.[6] The ATR rule was meant to align creditors' and borrowers' interests by creating an enforceable obligation for creditors to determine a borrower's

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[3] David Cho, Pressure at Mortgage Firm Led to Mass Approval of Bad Loans, Washington Post (May 7, 2007) ("The entire industry, over time, became more lax. . . . The more [loans] you accepted, the better relationship and the better price you would have. The name of the game was definitely volume."); "Structured Finance in Focus, The Subprime Decline – Putting it in Context" at 3, Moody's Investors Service (Mar. 2008) ("The subprime crisis is largely a product of increasingly aggressive mortgage loan underwriting standards adopted as competition to maintain origination volume intensified amid a cooling national housing market.").

[4] Kathleen C. Engel and Patricia A. McCoy, The Subprime Virus: Reckless Credit, Regulatory Failure and Next Steps, at 38, see also 35-38 (2011).

[5] *See* Residential Property Assessed Clean Energy (PACE) Loans: The Perils of Easy Money for Clean Energy Improvements, September, 2017, which is an Attachment to these comments and also available at: https://www.nclc.org/images/pdf/energy_utility_telecom/pace/ib-pace-stories.pdf.

[6] 12 C.F.R. § 1026.43.

ability to repay a loan and to document and verify key items like income and assets. The sensible practices required by the ATR rule help prevent abusive mortgage lending.

Similar to the Dodd-Frank Act, the ATR provisions of AB 1284 have the potential to curb some of the worst practices involving PACE loans. However, the ATR provisions of AB 1284 are not self-implementing. Regulations by DBO are needed to provide guidance on several key issues discussed below and to promote consistent application of the repayment ability standards by program administrators.

1. DBO should require that the ability-to-repay review be completed before loan consummation.

A critical feature of AB 1284 is the requirement that homeowners' ability to repay be considered as part of PACE loan underwriting. Section 22686 of the Financial Code provides that a "program administrator shall not approve for funding, and recordation by a public agency, an assessment contract unless the program administrator makes a reasonable good faith determination that the property owner has a reasonable ability to pay the annual payment obligations for the PACE assessment."

The statutory language is silent on the issue of when the ATR review must occur. DBO should clarify through regulation that program administrators must determine the homeowner's ability to repay ***before*** the homeowner signs the assessment contract and ***before*** the home improvement work has begun.

A fundamental, unassailable principle of loan origination is that underwriting must be done before the creditor and borrower enter into a legally binding agreement. The ATR rule adopted by the CFPB requires that the lender make a determination of the borrower's ability to repay "at or before consummation" of the mortgage loan.[7] We are not aware of any regulatory scheme, state or federal, relating to any loan product that permits underwriting to be done after loan consummation.

Permitting PACE program administrators to review ability to repay after the assessment contract is signed will encourage careless and fraudulent underwriting practices. It will remove all incentives for program administrators to adhere to strict underwriting guidelines. Far worse, it will encourage after-the-fact manipulation of underwriting criteria so as to avoid any accountability for erroneous decisions.

Homeowners are sure to be harmed by such a practice as there is simply no practical way to unwind a binding loan transaction or provide equivalent relief to the homeowner. Even where a program administrator states that it will be responsible for such difference where applicable, the homeowner's contract obligates the homeowner for the full payment amount and the homeowner's ability to hold the administrator accountable after the fact is extremely limited at best.

[7] 12 C.F.R. § 1026.43(c)(1).

Moreover, even if an ATR review conducted after the contract is signed prevents funding approval and recordation of the PACE loan, homeowners may still be harmed. If work has begun, the contractor may record a mechanic's lien – as we have already seen in cases where family members prevented approval of a PACE loan pushed on a vulnerable senior.

The purpose of AB 1284 in protecting homeowners will be completely thwarted if DBO regulations do not mandate that the ATR review must be completed before loan consummation.

2. If ATR reviews are not conducted before loan consummation, DBO should require that PACE loan underwriters responsible for ATR review be isolated from the final loan approval process.

If DBO does not require that all ATR reviews be conducted before loan consummation, it should adopt regulations to encourage responsible behavior by PACE loan underwriters. Section 22687(g) of the Financial Code makes the program administrator "responsible" if a PACE loan is erroneously originated to a homeowner who does not have an ability to repay. (Section 22687(g) itself needs implementing regulations by DBO as we discuss below).

We are concerned that PACE administrators will skew ATR reviews in order to avoid responsibility for an erroneous PACE loan origination. Faced with the prospect of being financially responsible for a PACE loan that should not have been made, PACE administrators and their employees will have a perverse incentive to qualify borrowers in post-consummation ATR reviews and to effectively look the other way when confronted with borrower information that negatively impacts the ATR analysis.

DBO regulations should provide that if a program administrator elects to conduct any ATR reviews after homeowners have signed the PACE assessment contract, the PACE loan underwriters responsible for conducting the ATR review should be prohibited from making the final decision on loan approval or from knowing whether the loan has been funded. This can be accomplished by requiring that program administrators have a dedicated unit of underwriters and loan processors that handle the ATR review, and that individuals in the ATR unit be segregated from those in the loan closing unit who are responsible for ensuring that the assessment contract is closed, funded, and recorded. This is the only way to ensure that ATR reviewers have complete independence in the ATR evaluation function.

The DBO rule should also prohibit PACE program administrators from paying loan underwriters compensation that may be impacted in any way by the outcome of the ATR analysis. This means that PACE loan ATR underwriters should not be compensated, or be subject to disciplinary actions or bonuses, based on the number (or quotas) of PACE assessment contracts that are approved for funding and recordation.

3. DBO must ensure that the "responsible for that difference" requirement in section 22687(g) of the Financial Code provides a meaningful remedy for homeowners.

Section 22687(g) of the Financial Code provides that "[i]f there is a difference between the determination of the property owner's ability to pay the annual PACE obligations and the actual amount financed for the property owner, and the property owner is obligated on the underlying home improvement contract, the program administrator shall be responsible for that difference."

The statutory language does not state *to whom* the program administrator is responsible for the difference. The most logical construction of this language based on the consumer protection purpose of AB 1284 is that the homeowner's payment obligation on the PACE assessment contract must not exceed the amount established under the ATR analysis.

Thus, the existing PACE loan and assessment contract must be modified to make the annual assessment payment amount reflect the homeowner's ability to repay. Consistent with the statutory language, the homeowner must not be responsible for paying the difference between what the homeowner paid or is obligated to pay on the home improvement contract and the qualifying loan amount determined under the ATR analysis. Modification of the assessment contract must not involve an extension of the loan term.

There may be administrative and legal issues under California law (and securitization or bond requirements) in modifying an assessment contract that has been funded and recorded. If that is true, DBO should require that program administrators take action that is equivalent to a loan modification.

The preferred method for accomplishing this result is to require that the program administrator conduct a refinancing transaction that pays off the existing assessment contract that was made without the ATR review. As part of the refinancing, the homeowner will be provided a new assessment contract in an amount established by the ATR review, with the proceeds being used to pay off a portion of the balance owed on the existing assessment contract. The program administrator must be required to pay any remaining balance owed on the existing assessment contract, including any outstanding interest, prepayment fees or other fees related to the payoff of the existing assessment contract, as well as any origination and recording fees related to the new assessment contract.

For example, assume that the homeowner signed a PACE loan in the amount of $30,000 with a 10 year term. Assume also that after the loan was funded and the assessment contract was signed, the program administrator determined that the homeowner had an ability to repay only a $10,000 loan. A new PACE loan and assessment contract in the amount of $10,000 should be provided to the homeowner. If the payoff amount on the existing assessment contract is $31,400 at the time of the refinancing, and the net proceeds from the new $10,000 loan is $8,971 after prepaid interest and program costs are subtracted, the program administrator should pay the amount of $22,429 to pay off the existing assessment contract.

If DBO does not require that PACE loans be modified or refinanced, it should establish a fund maintained by the PACE taxing authority that would be used to offset the difference between the assessment contract payment and an adjusted payment amount that reflects the ATR analysis. Program administrators would be required to pay this difference into the fund. The homeowner would be required, through binding written documentation, to pay an adjusted, reduced annual payment rather than the full assessment annual amount provided for in the assessment contract. Tax collectors would then make withdrawals from the fund to cover the full annual assessment as homeowner payments are made, including at time of any early pay off. Using the above example, if the homeowner's annual assessment for the PACE loan is $4,344 based on the $30,000 PACE loan, and the adjusted annual payment amount on the $10,000 PACE loan that the homeowner could afford based on the ATR analysis is $1,665, the program administrator should be required to pay $26,790 into the fund that will be used by the local tax collector to cover the $2,679 difference in payment amounts over 10 years.

4. DBO should specify the minimum third-party records that program administrators must obtain to verify income.

Section 22687(b)(1) of the Financial Code states that program administrators "shall determine and consider the current or reasonably expected income or assets of the property owner that the program administrator relies on in order to determine a property owner's ability to pay the PACE assessment annual payment obligations using reasonably reliable third-party records of the property owner's income or assets." The section then lists examples of the records that a program administrator may use to verify income.

DBO should issue guidance specifying that reliance upon several of the listed examples in isolation can in certain circumstances lead to a determination of repayment ability that is unreasonable and in bad faith.

For example, DBO regulations should state that if the program administrator relies on income from the homeowner's employment in determining repayment ability, the homeowner's current employment status must be considered and verified. Reliance solely upon an IRS tax transcript or a W-2 wage and tax statement, which provide only a retrospective look at the homeowner's past income, is not sufficient to establish whether the homeowner is employed at the time of loan application or has a reasonable expectation of continued employment.

Program administrators should also obtain a pay stub from the most recent pay period or seek verification of employment status from the homeowner's employer, although a single pay stub should not be adequate to assess historical or reasonably expected income without further verification. If a program administrator obtains third-party records directly from the consumer, such as a pay stub, the program administrator must ensure that the records are reasonably reliable and specific to the individual consumer. Any income records obtained from a third-party service provider, such as a party the homeowner's employer uses to respond to income verification requests, must also be subject to appropriate due diligence by the program administrator to ensure they are reasonably reliable and specific to the individual consumer. If a program administrator verifies a homeowner's employment status orally by calling the employer, the

program administrator should be required to prepare a record of the information obtained orally that will be retained in the loan file.

5. DBO should significantly restrict the use of automated income verification systems and should prohibit their use for certain types of income.

Section 22687(b)(1) of the Financial Code states that program administrators "may use automated verification provided the source of that verification is specific to the income of the property owner and not based on predictive or estimation methodologies, and has been determined sufficient for such verification purposes by a federal mortgage lending authority or regulator."

DBO regulations should require that program administrators obtain approval from DBO before using any automated verification system to validate homeowner income, employment, and asset data, after providing proof that the system has been approved by a federal mortgage lending authority or regulator.

This section also requires that the source of the verification be "specific to the income of the property owner." This statutory language recognizes the limitations of existing automated income verification systems, which may be reliable only in verifying salary and wage income (depending upon the availability third-party payroll service records), or for obtaining IRS tax transcripts. Until such time as automated systems become reasonably reliable, DBO should prohibit their use for verification of other types of income such as self-employment income, military or reserve duty income, bonus pay, tips, commissions, interest payments, dividends, retirement benefits or entitlements, rental income, royalty payments, trust income, public assistance payments, and alimony, child support, and separate maintenance payments.

Third-party records a program administrator uses for verification of income must be specific to the individual homeowner. For example, records and data regarding average incomes in the homeowner's geographic location or average wages paid by the homeowner's employer are not "specific to the income of the property owner" and are not sufficient for income verification.

6. Information provided by homeowners in confirmation calls does not satisfy the requirement to obtain reasonably reliable third-party records.

Section 22687(a)(5) of the Financial Code requires program administrators to ask the homeowner open-ended questions during confirmation calls "to confirm the income provided on the application and to identify the sources of income." This conversation should not be a substitute for obtaining reliable third-party records, nor does the statutory language contemplate such application. DBO regulations should specify that program administrators may not rely upon the homeowner's responses during confirmation calls in making a reasonable good faith determination of ability to repay. Moreover, DBO should prohibit program administrators from asking during confirmation calls whether the homeowner believes he or she has an ability to repay the annual PACE assessment. DBO regulations should include language on this point

similar to the CFPB's Official Interpretations for the TILA ATR rule: "A consumer's statement or attestation that the consumer has the ability to repay the loan is not indicative of whether the creditor's determination was reasonable and in good faith."[8]

7. Consumer credit reports cannot be the sole record used to verify the homeowner's debt obligations.

Section 22687(c) of the Financial Code requires program administrators to "consider the monthly debt obligations of the property owner to determine a property owner's ability to pay the annual payment PACE assessment obligations using reasonably reliable third-party records, including one or more consumer credit reports …."

Some recurring debt obligations of the homeowner may not be shown on credit reports, such as certain housing expenses and obligations for alimony or child support. For example, if the homeowner does not have a mortgage with an escrow account, the homeowner's credit report will not have information about obligations for property taxes and assessments, hazard and flood insurance, private mortgage insurance, cooperative, condominium, or homeowners association fees (including any special assessments if paid on a recurring basis), and ground rent or lease payments.

Thus, program administrators will need to obtain records or billing statements for these obligations issued by third-parties, such as local taxing authorities, insurance companies, or condominium associations.

DBO regulations should state explicitly that a credit report does not serve as a reasonably reliable third-party record for purposes of verifying items that do not appear on the credit report. DBO should also provide guidance to program administrators on the types of debt obligations that are not customarily found on credit reports and will likely require third-party records other than credit reports.

8. DBO should limit consideration of potential future changes in income and debt obligations.

Section 22687(b)(1) of the Financial Code states that program administrators shall consider "current or reasonably expected income." Program administrators should verify that the homeowner's income is stable and reliable, and that it is anticipated to continue during the foreseeable future.

Program administrators should consider future changes of circumstances that might significantly decrease income. For example, the homeowner may be planning to retire imminently and not obtain new employment, or be planning to transition from full-time to part-time employment. Homeowners should not be approved for loans that will soon be beyond their means.

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[8] Official Interpretations to Reg. Z, ¶ 43(c)(1)-1.

Potential increases in income are generally speculative and should not be considered. While some flexibility may be warranted for changes that are virtually certain to occur, reliance on income increases that have not yet occurred would undermine affordability reviews in most instances. DBO regulations should provide that any reliance by a program administrator on the expectation that income will be available for repayment of the assessment must be reasonable and verified with third-party records that provide reasonably reliable evidence of the homeowner's expected income. The same should apply for any potential changes in debt obligations.

Section 22687(b)(2) states that "[i]ncome may not be derived from temporary sources of income, illiquid assets, or proceeds derived from the equity from the subject property." Regulations issued by DBO should make clear that these forms of income must not be considered in determining repayment ability.

9. Consideration of residual income by program administrators must be based on a realistic estimate of the homeowner's household expenses.

Section 22687(d)(4) of the Financial Code requires program administrators to determine whether the homeowner has "sufficient residual income to meet basic household living expenses, defined as expected expenses which may be variable based on circumstances and consumption patterns of the household." This compels the program administrator to consider the homeowner's remaining income after subtracting the homeowner 's total monthly debt obligations (the PACE payment, all other housing payments, and debt payments) from the homeowner's total monthly income.

While AB 1284 requires consideration of residual income, it does not preclude program administrators from considering other methods of determining repayment ability, such as consideration of a monthly debt-to-income ratio. DBO should issue guidance instructing program administrators not to rely solely on a residual income analysis.

Residual income, on its own, is unlikely to provide an adequate assessment of affordability. In implementing the ATR requirements of the Dodd-Frank Act, the CFPB's rule permits mortgage lenders to consider either the consumer's monthly debt-to-income ratio or the consumer's monthly residual income, or lenders may consider both standards in making a final determination.[9] The CFPB's Official Interpretations state: "If a creditor considers the consumer's monthly debt-to-income ratio, the creditor may also consider the consumer's residual income as further validation of the assessment made using the consumer's monthly debt-to-income ratio."[10] Similarly, the U.S. Department of Veteran's (VA) underwriting standards for its mortgage program require lenders to consider both the debt-to-income ratio and residual income standards.[11] The VA's handbook states: "VA's minimum residual incomes (balance available

[9] 12 C.F.R. § 1026.43(c)(7)(i).
[10] Official Interpretations to Reg. Z, ¶ 43(c)(7)-2.
[11] 38 C.F.R. § 36.4340(c).

for family support) are a guide. They should not automatically trigger approval or rejection of a loan. Instead, consider residual income in conjunction with all other credit factors."[12] Similar guidance is provided for consideration of the VA's debt-to-income ratio.[13]

Section 22687(d)(4) of the Financial Code states that a "program administrator may make reasonable estimation of basic living expenses based on the number of persons in the household." Importantly, this requires consideration of the entire household's expenses, not simply those of the property owners. If charts of estimated expenses reflecting minimum residual income based on family size are permitted to be used, DBO regulations should require program administrators to include all members of the household without regard to the nature of their relationship.

While section 22687(d)(4) permits "reasonable estimation of basic living expenses," it also defines expected expenses to be "variable based on circumstances and consumption patterns of the household." Read together, these provisions suggest that program administrators may not rely solely upon a chart or table containing minimum residual income figures, such as the VA's Table of Residual Incomes by Region.[14] Program administrators must also consider the individualized expenses of the homeowner's household based on its "circumstances and consumption patterns."

Program administrators should be required to obtain information as part of the application process about any expenses that are unusual or specific to the homeowner's household, such as child care and healthcare expenses. An estimated residual income table may be considered as a guide, but the expense figures in any such table should never be substituted for information obtained about the homeowner's specific circumstances.

DBO should also require that any charts or tables of minimum residual income based on family size be submitted to DBO for approval before being used by program administrators. Residual income figures in such tables should be reviewed by DBO to ensure they provide a realistic estimate of household expenses in California. We have concerns that program administrators may rely too heavily on the VA's Table of Residual Incomes by Region. As mentioned above, VA regulations intend that its residual income Table is just one of many factors in the final underwriting determination.

Moreover, the minimum residual income figures in the VA's Table underestimate household expenses in California. For example, the Table indicates that a family of four in the West region (which includes California) should have residual monthly income of $967.[15] This amount is

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[12] VA Pamphlet 26-7, Revised Chapter 4: Credit Underwriting, p. 4-59, April 10, 2009.
[13] *Id*. at 4-60) ("[VA's debt-to-income ratio] is a guide and, as an underwriting factor, it is secondary to the residual income. It should not automatically trigger approval or rejection of a loan. Instead, consider the ratio in conjunction with all other credit factors.").
[14] 38 C.F.R. § 36.4340(d).
[15] 38 C.F.R. § 36.4340(d) (for loan amounts of $79,999 and below). The numbers in the VA Table are based on data supplied in the Consumer Expenditures Survey (CES) published by the Department of Labor's Bureau of Labor Statistics.

intended to cover the household's expenses for food, health care, clothing, transportation, telecommunications and miscellaneous expenses.[16] The UC Berkeley Labor Center Living Wage and Self-Sufficiency chart suggests that the VA figures significantly underestimate the expenses of a California family.[17] For example, UC Berkeley estimates the following monthly expenses in the residual income expense categories for a household with two working parents and two children in San Diego: $773 for food, $491 for health care, $510 for transportation, and $787 for miscellaneous expenses, for a total of $2,561. Thus, the VA Table underestimates the San Diego households needed residual income by $1,594 per month.

10. The inability of homeowners to pay PACE assessments in monthly installments is a factor that should be considered in determining repayment ability.

If the homeowner does not have a mortgage with an escrow account, the program administrator should be required to determine whether the homeowner has the ability to pay the annual assessment in two lump-sum installments rather than as a monthly payment amount. A program administrator's ability-to-repay determination would not be reasonable and in good faith if factors affecting the homeowner's ability to budget for lump-sum assessment payments are ignored.

For example, if a homeowner has both a full-time job and a part-time job, and the part-time job is only seasonal for two months of the year, it may not be reasonable to determine the homeowner's repayment ability based on the income from both jobs since the part-time income may not be available to the homeowner when the assessment payment comes due.

Program administrators should also consider the timing of when the first assessment payment is due in relation to when the assessment contract was signed, as the homeowner may not have had sufficient time to budget for the lump-sum payment or may not have adequate savings to draw upon. This can also be an issue for homeowners with a mortgage escrow account, as the servicer will account for the large increase in tax disbursements by adjusting the monthly escrow payment, and the timing of the escrow analysis in relation to when the first assessment payment is due may cause the escrow account to have a shortage. Recovery of this shortage together with the payments required to fund the escrow account going forward (including the typical two-month cushion) can produce a sharp increase in the monthly escrow payment amount that significantly exceeds the monthly cost of the PACE assessment. Program administrators should consider the effect of this payment shock on the homeowner's ability to repay.

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[16] Under the VA residual income standard, utilities and home maintenance, and child care and support payments, are deducted from income before comparison to the minimum residual income figures.

[17] UC Berkeley Labor Center, Making Ends Meet: How Much Does It Cost to Support a Family in California?, interactive chart available at: http://calbudgetcenter.org/resources/making-ends-meet-much-cost-support-family-california/.

11. DBO regulations should address record retention by program administrators.

AB 1284 does not address the retention of repayment ability verification records by program administrators. DBO should have access to these records in its supervisory and enforcement roles in order to ensure compliance with the ATR requirements in AB 1284. Homeowners should also be able to obtain such records in the event of litigation related to alleged violations of AB 1284.

We believe DBO should establish minimum requirements for record retention. Program administrators should be required to retain copies of verification records for a period of five years. If program administrators do not retain actual paper copies of documentation used in underwriting a PACE loan, they must be able to reproduce such records accurately from any electronic storage. For example, if a homeowner's W-2 form is used to verify income, DBO should specify that program administrators must be able to reproduce the form itself, not merely the income information that was contained in the form.

B. PACE valuation procedures should promote reliability and transparency.

Section 22684 of the Financial Code provides that a borrower's total loan-to-value ratio for all mortgage related debt including all PACE assessments shall not exceed 97 percent of the market value of the property. Valuation of a property is essential to ensuring that the lender's security is properly protected and that a homeowner is both avoiding undue risk and not borrowing more than the designated percentage of the property's value. It is of course also useful for ensuring that the debt does not exceed the property's value entirely. This last concern is especially a consideration where program rules, such as in AB 1284, allow for exceedingly high loan-to-value ratios. Even modest errors in valuation could result in a homeowner owing more on the loans than the home is worth.

1. DBO should promulgate valuation regulations as soon as possible.

Section 22685 sets out the guidelines for how to determine market value for PACE loans and the rules for communicating that assessment to the homeowner. While subsection (c) sets an effective date for this section of January 1, 2018, DBO should promulgate regulations with more detail that become effective as soon as possible. Failure to clarify certain aspects of the valuation rules could lead to potential overvaluations of properties, a risk to homeowners, creditors and municipalities.

2. DBO should require free, written, advance disclosure of the valuation.

Subsection (b) of section 22685 requires that the market valuation be disclosed to the property owner prior to signing of the assessment contract. In order to make this requirement meaningful, DBO should issue regulations requiring program administrators to provide such valuation in writing, including all pertinent documentation of the valuation. It also should require that it be

provided three business days prior to the signing of the assessment contract and be provided free of charge.

Such an approach would mirror the federal rules applying to first-lien mortgages under the regulations under the Equal Credit Opportunity Act's Dodd-Frank amendments[18] and meet the intended goal of the provision, which is to provide clear, written notice of the valuation with time to act if there is a concern. Subsection (a)(2) provides that an appraisal must be conducted within six months of the application date. DBO should clarify that any appraisal would be done prior to signing of the assessment contract, as per subsection (b).

3. DBO should require appraisals on high LTV loans.

Section 22685 sets out two alternative approaches to valuations, automated valuation models (AVMs) and traditional appraisals, without expressing a preference. This is a significant departure from how mortgages are valued in many other mortgage transactions. Full appraisals are the default in most individual transactions. For higher-priced mortgage loans, Dodd-Frank requires written appraisals based on physical interior inspections.[19] By placing AVMs on equal footing with appraisals, the California statute risks a trend of inaccurate valuations, and DBO must ensure these risks are minimized.

One way to ameliorate this risk is to only allow AVMs where the projected LTV is below some safer threshold, such as an 80% LTV. An 80% LTV is the figure used generally in the mortgage business as demarcating safer loans that do not need private mortgage insurance.[20] For loans under 80% LTV, DBO should allow an AVM on a PACE loan. However, where the valuation brings the debt on the property into riskier territory, DBO should require full valuations.[21] A fuller discussion of AVM accuracy issues is provided below.

4. DBO should require appraisals where there is no confidence score.

Subsection (a)(1)(D) provides that a program shall utilize the estimated value with the highest confidence score for a property, but if a model that otherwise meets the criteria set out in the section does not obtain a confidence score for a subject property, the PACE program should use the average of all estimated values, even where those values do not have confidence scores. While AVMs are often used for valuations in association with portfolios or in other contexts,

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[18] 12 C.F.R. § 1002.14. This section also contains procedures for waiving the three-day waiting period, which must be done at least three business days before consummation.
[19] 12 C.F.R. § 1026.35.
[20] For example, in the Homeowners Protection Act, Congress allowed homeowners to cancel private mortgage insurance at an 80% LTV. *See* 12 U.S.C. § 4901.
[21] If DBO were looking to avoid reliance on AVMs for riskier LTVs but concerned about the cost and time associated with appraisals, DBO could establish rigorous standards for the use of broker price opinions (BPOs) in some circumstances. BPOs can be quite inaccurate in many circumstances but if they are done well, they can be useful, especially in rural areas.

they are not routinely used for individualized transactions. As discussed further below, research has shown that there is wide variation in AVM accuracy.

The properties for which no confidence score is obtained are the ones most likely to result in an inaccurate valuation. Simply taking the average of these three scores does not remove that significant risk. DBO should require a full appraisal (or a BPO that meets designated rigorous standards) where adequate confidence scores cannot be obtained.

AVMs generally are used in combination with other analytics, data reviews, property inspections or appraisals. AVMs are most often used to support bulk decisions such as portfolio valuations or for appraisal reviews.[22] Their accuracy is weaker when used for valuation for any individual property.

For example, in one study of 666 U.S. counties, on average the percentage of automated valuations across all counties falling within +/- 10 % of the sales price was only 70%, with variation between 20% and 92%, depending on the county. Thus, 30% of valuations on average were more than 10% different from sales price (which is itself different from appraised value). On average, not even half of all valuations across all of the counties were within +/- 5% of the sales price. About half were in excess of +/- 5%. However, in one county only 9% of the valuations were within the 5% bracket. The highest recorded individual county accuracy figure was 76%.[23] On an individual level, such widespread potential for error undermines the lending process and a homeowner's security.

In testimony provided in the U.S. House of Representatives, attorney Jennifer Wagner of Mountain State Justice in West Virginia recounted one client story that highlights the risks of AVMs:

> *Mrs. R was repeatedly solicited to refinance her loan in the early 2000s. After purchasing her home for $15,000 in the mid-1990s, Mrs. R fell prey to a mortgage broker-appraiser team, who soon had her in a loan exceeding $70,000. Scared of losing her home and looking for lower payments, Mrs. R entered her information into a website that advertised that it could lower her bills. Soon an out-of-state lender contacted her and promised lower payments. This lender did not bother with an appraisal from a licensed appraiser; instead, it utilized an automated valuation model (AVM) of her home which provided a wholly inaccurate and inflated valuation of her home based on faulty market data. Although her home was actually only worth $34,000, the lender told her that her home was worth $84,000 based on the AVM. The lender pressured her to borrow additional funds up to the "value" of her home to pay other debts. I met Mrs. R. when the interest only feature of her loan expired and she was faced with impossibly high*

[22] Automated Valuation Models: Increased Use Leaves Plenty of Work for Appraisers (Feb. 16, 2017), available at https://www.mckissock.com/blog/appraisal/automated-valuation-models-increased-use-leaves-plenty-of-work-for-appraisers/.

[23] George Andrew Matysiak, The Accuracy of Automated Valuation Models (AVMs), Report for The European Group of Valuers' Associations (TEGoVA) (May 2017), *available at* http://www.tegova.org/data/bin/a591190c05b2c3_Geoge_Matysiak_Valuation_Report.pdf.

payments. Mrs. R. tried to refinance, but she was rejected because the loan so far exceeded the value of her home. Now she faced foreclosure. Mrs. R's situation highlights the need for appraisals conducted by properly educated and regulated appraisers, rather than alternative methods. The automated valuation used by her lender was based on aggregate data from unverified public records that is often inaccurate, incomplete, or outdated. Moreover, programs like these cannot adequately consider neighborhood, condition of the property, location appeal, or altered building characteristics. Each of these factors is essential in understanding the true value of a home.[24]

C. The emergency exception requires regulations to limit abuse.

Section 22687(e) of the Financial Code sets out an emergency exception that allows waiver of certain underwriting requirements. DBO should issue additional regulations in order to limit opportunities for abuse. DBO should make clear that this exception is narrow and only applicable for a bona fide emergency. It may not be used to avoid compliance with the PACE statue and regulations. As Bet Tzedek has noted in its comments, though an HVAC system may be an emergency in some parts of the state in the summer, this is a much more difficult argument in the winter.

Subsection (e) sets out the limits of the exception by limiting it to the financing of "a heating, ventilation, and air conditioning (HVAC) system, boiler, or other system whose primary function is temperature regulation . . . ." DBO should issue regulations clarifying that the phrase "system whose primary function is temperature regulation" excludes non-emergency improvements that only arguably regulate temperature, such as exterior paint or window replacement.

In order to ensure that waivers of the right to cancel are genuinely provided by the borrower, DBO should require that the waiver be handwritten and personally signed. Docusign and e-sign should be prohibited for the waiver. To address the needs of borrowers with limited English proficiency, DBO should require that the waiver of the right to cancel in section 22687(e)(5) should be provided (and accepted by the administrator) in the homeowner's primary language.

In order to prevent pricing abuses, DBO should clarify that state laws against price gouging apply to this emergency exception. Pricing of such emergency projects should be scrutinized and additional regulation should be considered. DBO should monitor the assessment contract dollar cap for the emergency exception in (e)(6) to determine if any adjustment is needed, including any adjustment down to avoid price inflation or other fraud.

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[24] Testimony of Jennifer Wagner, Mountain State Justice (and on behalf of National Consumer Law Center's low-income clients and National Association of Consumer Advocates) before Subcomm. on Hous. and Ins. of the U.S. House of Rep. Comm. on Fin. Servs., *Modernizing Appraisals: A Regulatory Review and the Future of the Industry* (Nov. 16, 2016), *available at* https://financialservices.house.gov/uploadedfiles/hhrg-114-ba04-wstate-jwagner-20161116.pdf.

Reporting on PACE loans should include data specifically identifying loans made under the emergency exception and pertinent characteristics for each loan, including the type of product sold, the date of the assessment contract, and the total cost of such emergency assessment.

Because the emergency exception rules become effective in April 2018, we urge DBO to issue regulations on this section prior to that effective date.

D. DBO regulations should clearly delineate the various roles and responsibilities of PACE program administrators and solicitors.

PACE programs have used home improvement contractors as the salespeople for the loan product. Marketing is typically done by contractors through door-to-door sales. While PACE programs have been adopted by local governments in a well-intentioned effort to save energy and reduce homeowner energy costs, private contractors have engaged in practices that harm consumers and detract from the program's public purpose. The products being pitched and the workmanship of the installation by some contractors have been of questionable quality and benefit.[25] Contractors frequently upsell and push homeowners into purchasing unnecessary and unwanted home improvements that may have little connection to deep energy savings.

Homeowners have been induced to purchase home improvements using PACE financing based on dubious claims and representations. For example, a common pitch to homeowners is that PACE is a government program under which energy efficient improvements can be made with little or no costs to the homeowner.[26] Homeowners are often pressured by PACE contractors to sign contracts on the spot before getting full disclosure of the loan terms and without having a waiting period to think about the true costs.

Homeowners are promised large tax refunds as a result of their energy efficient improvements.[27] That half-truth has convinced some homeowners to enter into PACE transactions only to find that they were not eligible for the nonrefundable tax credit available for certain energy efficient upgrades. Low-income homeowners, in particular, who have limited or no tax liability, will not realize any significant benefit from the tax credit.

A common selling point promoted or implied by PACE program administrators and contractors is that energy efficient upgrades will reduce the homeowners' utility bill in an amount sufficient to offset the cost of the improvements.[28] However, homeowners are often sold products with modest impacts on efficiency, in part because they are not provided energy audits and they may have little knowledge about the relationship between the proposed improvements and actual energy savings.

[25] *See* Attachment (Stories 4, 6, 7, 8, 9, 10, 12, 14, 21, 27, 28, 29).
[26] *Id*. (Stories 1, 3, 9, 21, 22, 23).
[27] *Id*. (Stories 2, 6, 9).
[28] *Id*. (Stories 2, 19, 20, 22, 26, 29).

For example, windows have been installed with PACE financing that have turned out not to be Energy Star approved. Even Energy Star windows will not produce energy savings even close to the cost of the windows. PACE loans are often used for expensive "cool coat" paint and other work that is unlikely to produce significant energy savings.[29] Even in cases where some utility savings might be realized, it is unlikely to offset the costs of the improvements.

Expensive PACE loans have also been provided to lower income households who may be eligible for free or lower cost home energy improvements through the federal Weatherization program or other similar state and local programs.

AB 1284 attempts to reign in these abuses by subjecting program administrators to DBO oversight, and in turn requiring program administrators to enroll, educate, and discipline PACE contractors (referred to as "PACE solicitors"). This regulatory structure will be ineffective in protecting consumers if the role of PACE solicitors in the production of PACE loans is not drastically circumscribed. As discussed below, a critical first step for DBO will be to set the parameters of permissible activities by PACE participants.

1. PACE solicitors should be prohibited from participating in the PACE loan underwriting and origination process.

Section 22017 of the Financial Code defines a "PACE solicitor" to mean "a person authorized by a program administrator to solicit a property owner to enter into an assessment contract." A "PACE solicitor agent" is defined as "an individual who is employed or retained by, and acts on behalf of, a PACE solicitor to solicit a property owner to enter into an assessment contract." The legislation provides further that PACE solicitors and solicitor agents are not employees of program administrators.

Based on the current sales model for PACE loans and the definitions provided in section 22017, PACE solicitors and their solicitor agents (hereafter referred to collectively as "PACE solicitors") are home improvement contractors and their employees who solicit homeowners to sign up for PACE.[30] AB 1284 does not contemplate that PACE solicitors should have any skill or training in loan underwriting or origination. Their sole function, apart from performing home improvements, is to provide general information about the PACE program to homeowners and to act as an intermediary between the program administrator and the homeowner.

Consistent with this statutory scheme and in view of the widespread abuses by PACE contractors that led to the enactment of AB 1284, DBO should provide explicit guidance on the limited role of PACE solicitors. With respect to providing information about PACE to homeowners, PACE solicitors should be prohibited from making any oral or written representations about potential energy savings or tax benefits to the homeowner, or suggesting or implying that PACE is a government-funded or "free" program.

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[29] *Id*. (Stories 6, 7, 9).
[30] AB 1284 does not define what it means to "solicit" a homeowner.

All advertisements, marketing materials, and other information about the PACE program guidelines and financing terms given or directed to homeowners should be prepared by the program administrator. This includes all loan disclosures provide to homeowners. PACE solicitors should not be permitted to provide homeowners with any written or electronic materials (or make any oral representations) about PACE program guidelines and financing terms other than those prepared by program administrators. DBO has authority to issue such restrictions in order to implement the enrollment process requirements for PACE solicitors under section 22680 of the Financial Code and to carry out the anti-fraud and false statement provisions in section 22161.

In their role as an intermediary between the program administrator and the homeowner, PACE solicitors may assist program administrators in the application process by collecting income, employment and other documentation. However, this should be limited to providing homeowners with application materials and authorization forms, such as for obtaining income verification and tax transcripts. Given the potential for fraud and privacy infringement, PACE solicitors should not be permitted to obtain, either directly or as a representative of the program administrator, any income or expense verification documentation from third parties. PACE solicitors should be prohibited from having access to the homeowner's credit report and any home appraisal obtained by the program administrator.

DBO regulations should preclude PACE solicitors from participating in any way in the decision to originate and fund PACE loans or in setting the terms of PACE loans. Similarly, interest rates and other loan terms that are offered to homeowners should in no way be affected by the actions or inactions of PACE solicitors, including those resulting from any performance or discipline programs set up by program administrators. DBO should issue regulations barring PACE solicitors from offering or negotiating terms of a PACE loan. DBO should also declare it an unfair business practice for program administrators to permit PACE solicitors to offer or negotiate terms of a PACE loan.

Section 22681 of the Financial Code requires program administrators to establish a training program for PACE solicitor agents that is acceptable to DBO. DBO should ensure that all training materials and educational programs instruct PACE solicitors on their limited role and the consequences for acting beyond the scope of authority given them to serve as a PACE solicitor.

Section 22680(f) requires program administrators to "establish and implement a process for canceling the enrollment of PACE solicitors and PACE solicitor agents who fail to maintain the minimum qualifications required by this section, or who violate any provision of this division." DBO should not leave to program administrators the task of setting the enrollment cancelation standards for PACE solicitors. DBO should specify in regulations the specific acts and omissions that can lead to cancelation of enrollment.

AB 1284 is ambiguous as to DBO's role in making public the names of PACE solicitors and solicitor agents who have lost their right to solicit property owners through cancelation of enrollment. It is critical that all program administrators have access to this information to ensure that an unscrupulous PACE solicitor who has been banned by one program administrator does not simply move on to another administrator and continue to harm other property owners. DBO

should establish a readily searchable registry or database system of banned solicitors that is available to program administrators and potential PACE borrowers. Access to such a list or database should be both publically available and free to the public.

2. DBO should require PACE loan originators employed by program administrators to follow requirements similar to those it has established under the S.A.F.E. Act.

In 2010, DBO began implementing Senate Bill 36, which brought California into compliance with the "Safe and Fair Enforcement (S.A.F.E.) for Mortgage Licensing Act of 2008" (S.A.F.E. Act).[31] The S.A.F.E. Act was intended to address abusive practices in the origination of home mortgages. The legislative history of the Act reflects Congress's intent to address the problems of "predatory lending tactics" that placed "unsuspecting borrowers in mortgages they could not afford."[32] The Act created federal licensing and registration requirements for "mortgage loan originators," which are individuals who for compensation or gain take residential mortgage loan applications or offer or negotiate terms of a residential mortgage loan. Mortgage loan originators are required to register with the Nationwide Mortgage Licensing System and Registry. As implemented in California, all mortgage loan originators employed by finance lenders and brokers under the California Finance Lenders Law (CFLL) or residential mortgage lenders and servicers under the California Residential Mortgage Lending Act (CRMLA) must be licensed.

Although the S.A.F.E Act does not require employees of certain depository institutions to be licensed, the CFPB has ensured through regulation that the consumer protection purposes of the Act apply to those individuals. Regulation Z requires depository institutions to ensure that their loan originator employees meet character, fitness, and criminal background standards similar to existing S.A.F.E. Act licensing standards. Financial institutions also must provide training to their loan originator employees that is appropriate and consistent with those employees' origination activities.[33] The rule requires criminal background and credit checks for loan originator employees and describes the circumstances in which a criminal conviction is disqualifying. A depository institution must ensure that its loan originators have "demonstrated financial responsibility, character, and general fitness such as to warrant a determination that the individual loan originator will operate honestly, fairly, and efficiently."[34]

DBO should follow the lead of the CFPB and require loan originators employed by program administrators to meet character, fitness, and criminal background standards similar to existing S.A.F.E. Act licensing standards, and to provide training to them consistent with those employees' PACE loan origination activities.

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[31] 12 U.S.C. § 5102 et seq.
[32] *See, e.g.*, Sen. Feinstein, 1154 Cong. Rec. at 734.
[33] 12 C.F.R. § 1026.36(f)(3).
[34] 12 C.F.R. § 1026.36(f)(3)(ii)(B).

E. Conclusion.

Thank you for the opportunity to comment on the proposed rulemaking to implement AB 1284. Regulations issued by DBO are critically needed to carry out the consumer protection purposes of AB 1284 and to make its provisions meaningful. We hope to have the opportunity to submit additional comments as DBO develops proposed rules. We are also available to respond to any questions DBO staff may have about our recommendations. For further discussion, please contact John Rao at jrao@nclc.org and Alys Cohen at acohen@nclc.org.

NCLC®
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Residential Property Assessed Clean Energy (PACE) Loans: The Perils of Easy Money for Clean Energy Improvements

September 2017

Property Assessed Clean Energy (PACE) programs offer loans for energy efficient home improvements, such as solar panels, HVAC systems, and energy efficient windows. PACE loans are offered through home improvement contractors and are secured by a property tax lien. That property tax lien is collected through a property tax assessment, and it takes priority over any existing mortgage. PACE programs must be authorized by state and local governments, but PACE programs are privately run with little or no government oversight.[1]

Over the last two years there has been a sharp increase in homeowners seeking assistance from legal services and other organizations in relation to PACE loans. It is becoming more apparent that the laudable goal of improving home energy efficiency is being overshadowed by the lack of adequate consumer protection for these loans. There are growing signs that unscrupulous home improvement contractors are selling unnecessary and unwanted home improvements, at times with little connection to deep energy savings, through misrepresentation and in some cases outright fraud. The weak PACE loan regulation enables these contractors to saddle homeowners with debt they cannot afford and which puts their homes at risk for foreclosure.

The National Consumer Law Center (NCLC) is collecting stories described to us by numerous consumer advocates or reported in the news media or online. The homeowner stories that were shared with us demonstrate disturbing patterns. We summarize those patterns with numerical references to the stories.

Unaffordable Loans without Screening for Ability to Pay

While there are minimal underwriting criteria for PACE loans, a verifiable ability-to-pay in not among them.[2] Instead, many narratives show unaffordable home loans made to low-income

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[1] The experience in California and elsewhere has been that program administration and loan origination is handled by a third-party, non-governmental program administrators, such as Renovate America, Ygrene Works, and Renew Financial.

[2] The limited underwriting criteria currently for PACE include: the property owner may not be delinquent on property taxes; the property cannot have had more than one 30-day mortgage late payment over the previous twelve months; existing loan-to-value ratios must be below certain thresholds; proposed improvements must not exceed 15% of the market value of the property and the combined mortgage related debt and amount of the PACE assessment must not exceed 100% of the market value of the property; and the total annual property tax and assessments, including the contractual assessment, on

homeowners on fixed incomes with little ability to pay an additional couple thousand dollars a year in property taxes. [Story 1, 3, 6, 7, 8, 20]. Low-income homeowners also are not screened for referral to state or local programs that provide free or lower cost options, such as the federal Weatherization Assistance Program.

Enabling Contractor Fraud

PACE programs are designed to use home improvement contractors as the salespeople for the loan product. Marketing for eligible upgrades is typically done by contractors through door-to-door salespersons, up-selling from other repairs, advertisements and telemarketers.[3] [1, 4, 5, 7, 9, 12, 19, 26]. Like snake oil, in the cases we have heard about, the products being pitched and the workmanship of the installation are of questionable quality and benefit. [4, 6, 7, 8, 9, 10, 12, 14, 21, 27, 28, 29]. Contractors who often know the maximum PACE loan available to any given homeowner frequently upsell and push homeowners into purchasing unnecessary and unwanted home improvements. [4, 24]. Yet, PACE programs provide little recourse for homeowners who have been duped by home improvement contractors.

Homeowners have been induced to purchase home improvements using PACE financing based on dubious claims and representations. For example, a common pitch to homeowners is that PACE is a government program under which energy efficient improvements can be made with little or no costs. [1, 3, 9, 21, 22, 23]. Homeowners often do not recognize this misrepresentation immediately because of the lag time that it takes for PACE financing to appear on their tax bills or in escrowed mortgage payments. Further, some homeowners may not understand that an increased tax bill is the direct result of PACE financing for home improvements that may have been done a year or year and a half earlier. In other instances, homeowners have been promised a large tax refund as a result of their energy efficient improvements. [2, 6, 9]. That half-truth has convinced some homeowners to enter into PACE transactions only to find that they were not eligible for the nonrefundable tax credit available for certain energy efficient upgrades.[4] Low-income homeowners, in particular, who have limited or no tax liability, will not realize any significant benefit from the tax credit. That fact, however, has not stopped salespeople from using the promise of a tax refund that will purportedly pay for the work to induce homeowners to install energy efficient products.

Elder Financial Abuse

Many of the worst abuses described, from upselling and shoddy work to making unaffordable loans, have been targeted at elders living on fixed incomes and suffering from health problems. [2, 3, 4, 7, 10, 13, 14, 15. 19, 25]. A homeowner in her eighties with significant health problems and dementia, living on a fixed income, was sold a $45,000 loan for overpriced and unnecessary home improvements following a four hour sales pitch. [7] Another elder was stripped of her home equity that could have been used to pay for her transition to an assisted

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the property must not exceed a certain percentage of the property's market value.

[3] Many PACE program administrators also offer co-marketing opportunities to contractors, permitting contractors to use the program's logos, advertising copy and other branding. R-PACE: Residential Property Assessed Clean Energy, A Primer for State and Local Energy Officials, p. 38 (March 2017).

[4] *See* 26 U.S.C. §§ 25C, 25D (describing certain nonrefundable personal tax credits). A taxpayer claiming a nonrefundable credit can only use it to decrease or eliminate a tax liability. A taxpayer will not receive a tax refund for any amount that exceeds a taxpayer's liability for the tax year.

living facility after the sale of her home. [17]. Many of the loans were executed with an electronic signature by elders who are not computer literate or do not have access to electronic mail.

Insufficient and at Times Minimal Energy Savings

Then there is the myth of net bill neutrality. A common selling point promoted by PACE providers is that energy efficient upgrades will reduce the homeowners' utility bill in an amount sufficient to offset the cost of the improvements. [2, 19, 20, 22, 26, 29]. Homeowners who have little knowledge about the relationship between the proposed improvements and actual energy savings may be sold ineffective products. For example, in one case the windows installed with PACE financing turned out not to be Energy Star approved. [28]. PACE loans have often been used for work like expensive "cool coat" paint and other work that is unlikely to produce significant energy savings. [6, 7, 9] Even in cases where some utility savings might be realized, it is unlikely to offset the costs of the improvements.

Problems Refinancing and Selling

Homeowners are told that they are not responsible for the assessment if they sell the property and that it will carry over to the new homeowner. But purchasers typically are unwilling to assume the assessments and homeowners are forced to pay them off to complete a sale. PACE loans have also produced well documented problems with refinancing. Finally, we have repeatedly seen the uncertain claim that the homeowner's property value will increase without the related disclosure that the homeowner may have difficulty selling or refinancing the home without completely paying off the PACE assessment. [2, 11, 17, 25].

Technology Meets the Hard Sell

The narratives that we received consistently describe high-pressure sales tactics used to lock homeowners into vastly overpriced improvements and high cost financing. Many senior homeowners and homeowners with limited English proficiency were pushed to enter into home improvement contacts and/or loan agreements on the spot through mobile tablets and e-signatures. [1, 7, 9, 10, 13, 15]. Use of electronic signatures, especially for those with no or low computer literacy, denies the homeowner a real opportunity to review and possibly reconsider the agreement. In some cases, it was unclear whether the homeowner ever received copies of agreements they purportedly signed, and in other cases, it was unclear whether the electronic signature was, in fact, the homeowner's or whether it was forged by the salesperson.

High Cost

Homeowners have also been caught by surprise by the high cost of the home improvements and high cost of the PACE financing. [7, 8, 9, 12, 15, 16, 17, 18, 19, 21, 30]. For example, one homeowner was charged $23,150 for exterior home painting, a job that should have been less than 25% of that figure. [7].

PACE loans typically carry interest rates that are high for a home-secured loan with little risk of default. Because PACE loans are considered property tax liens that take priority over any mortgages (and the servicer may be obligated to advance a delinquent tax assessment), the risk of default is much lower than traditional home financing. Yet, the cost of PACE financing is nearly double other home equity loan products. The PACE loans we have heard about range from $10,800 to $56,700 (an average of just over $33,000) mostly with 20-year terms and annual percentage rates of 8 to 11%. [7, 12, 16, 17, 18, 19, 21, 29]. Some even have prepayment penalties, a feature that many consider predatory and that federal law now largely bans for traditional home financing. [16, 17, 18]. Costs to PACE borrowers are not limited to the loan contract terms, as most state property tax laws impose significant penalties and additional interest on homeowners if tax assessments are not timely paid.[5]

Two-Contract Dodge

Contractors have taken advantage of a loophole in the PACE loan process by making multiple loans to the same homeowner. Because of the lag time before PACE liens are recorded and registered with the local tax collector, contractors have evaded maximum loan-to-value restrictions and other requirements by placing loans with different PACE providers, knowing that PACE providers may not discover that other PACE loans are being made at approximately the same time. Several homeowners have been saddled with more than one PACE loan, often not even knowing that they were entering into separate loans. [3, 4, 17].

Wall Street Lurking in the Background

Fueling the demand for more PACE loans is Wall Street's appetite for bonds backed by them. As of the third quarter 2016, more than $3.3 billion in PACE bonds had been issued.[6] PACE industry executives forecast that the current PACE financing will double by 2018, making it the fastest-growing form of financing in the nation.[7] In turn, many of the PACE bonds are packaged and securitized with the new securities being snapped up by Wall Street investors. Super-priority lien position and high interest rates combine to create an attractive investment. These dynamics are creating a push to originate loans without underwriting in the same way that Wall Street fueled the improvident lending that led to the financial crisis. Wall Street may not be at significant risk from PACE loans due to the senior position of loans that are small relative to the value of the property. But the impact on homeowners may well prove to be similar to the impact of the subprime loans of the mid-2000s.

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[5] For example, if a property tax or assessment in California is not paid by 5:00 pm on December 10 and April 10 of each year, a 10% penalty is applied by the local taxing authority. In addition, on July 1 of each year, the local taxing authority will impose an interest charge of 1.5% per month (18% per year) until the property assessment is paid. These amounts must be paid in addition to the loan interest.

[6] R-PACE: Residential Property Assessed Clean Energy, A Primer for State and Local Energy Officials, p. 54-55 (March 2017).

[7] *Wall Street Journal*, Kirsten Grind, "America's Fastest-Growing Loan Category Has Eerie Echoes of Subprime Crisis," Jan. 10, 2017, available at: http://www.wsj.com/articles/americas-fastest-growing-loan-category-has-eerie-echoes-of-subprime-crisis-1484060984.

Homeowner Stories from the Field

1. $64,000 Solar Panels for Habitat Home

Terms: $24,000, 9%, 25 years
PACE provider: n/a
Work: Solar Panels
Date of Work: n/a
Contact: David Battany, Habitat for Humanity Board Member
dbattany@guildmortgage.net; 858-348-6006

This single, low-income African-American woman owned a Habitat for Humanity home. She was one year from paying off her Habitat mortgage. Habitat services the loan and escrows tax payments. Habitat saw a huge spike in the tax assessment that the homeowner, who had an unstable work history, had no ability to pay. Upon investigation, Habitat determined that the homeowner had been solicited door-to-door for solar panels and was led to believe that the energy improvements would be done at no cost to her. She had no paperwork, but apparently signed on an electronic tablet. The terms of the PACE loan included an initial principal balance of $24,000, an interest rate of 9%, and a term of 25 years, for a total cost of over $64,000. The solar panel contractor apparently sent the agreement to the wrong email address, and the homeowner never received them. With the additional tax assessment the Habitat loan was no longer affordable. To prevent foreclosure, Habitat refinanced the PACE loan into a Habitat 0% loan over ten years.

2. Phantom Tax Credit and Illusory Energy Savings for Elderly Homeowner with Limited English Proficiency

Terms: Annual payment approximately $3,900, estimated principal $38,000
PACE provider: Renovate America (HERO)
Work: Solar Panels
Date of Work: n/a
Contact: Alysson Snow, Legal Aid of San Diego
alyssons@lassd.org; 619-471-2655

A door-to-door salesman from Fidelity Home Energy solicited an elderly homeowner, whose primary language was Spanish and who had limited English proficiency. The homeowner was induced to purchase solar panels based on representations that she would receive a $10,000 check from the IRS, her home value would increase, and her energy bills would be lowered. In order to lower her energy bills, which were around $125 per month, the homeowner entered into an agreement for the installation of solar panels. To finance the solar panel purchase, the company offered her a PACE loan through the HERO program. None of the documents provided to the homeowner were in Spanish and loan disclosures were hidden deep in the contract. The HERO agreement included a Civil Code section 1542 release, thereby releasing the holder of all liability now and in the future. Each of the representations upon which the homeowner relied turned out to be false. The solar company representative told her that she would receive a $10,000 check from the IRS; the homeowner was not eligible for this refundable tax credit because her income of only social security was too low to credit tax liability that could be offset by the credit. Second, she was told the value of her home would increase, but the priority lien has made it more difficult for potential buyers to obtain a loan to purchase the

house. Third, her monthly energy bill of $125 was replaced by a monthly tax bill of $450. Unable to pay the additional property tax, she has defaulted and is now facing foreclosure.

3. Reverse Mortgage and Four Unaffordable PACE Assessments

Terms: Four liens totaling more than $17,000 in annual assessment. Total liens of approximately $144,000.
PACE provider: Two Ygrene, one Renovate America, one unknown
Work: Solar Panels, “green” improvements to home; kitchen renovations
Date of Work: 2014, 2015, and two in 2016
Contact: Alysson Snow, Legal Aid of San Diego
alyssons@lassd.org; 619-471-2655

An elderly gentleman (71 years old) with a reverse mortgage was repeatedly solicited in his home for home improvement repairs. Each time, he was offered PACE financing to cover a variety of home improvements, including solar panels, kitchen renovations, and "green" improvements on his home. For the 2014 and 2015 property assessments, his property taxes in 2016 increased from around $310 annually to over $5,476. In 2016, the reverse mortgage lender paid the tax assessment when the homeowner could not, the reverse mortgage lender initiated foreclosure proceedings and filed a notice of default was recorded. The homeowner exhausted all of his savings to come current. In 2017, his annual assessment is now over $17,000 due to the two new liens in 2016. His annual income is around $10,000 a year. On his fixed income, he will not be able to pay the additional the property tax and again faces foreclosure. The loans were made with knowledge of his inability to pay. Further, the transactions were wrought with fraud. For example, the written advertisement for the solar panels states, “The Government will pay 30% of your Solar.” The written advertisement expressly reads, “Investing in Solar WILL NOT RAISE your property taxes.” Both statements are false. Client had no understanding of how the PACE program worked he assumed it was a Government program that would pay for the improvements.

4. False Representations to 95-year Old Veteran and His Legal Blind and Deaf Wife

Terms: Lien around $10,800
Homeowners entered into a second finance agreement for more than $50,000 with a PACE provider, however, the work is incomplete and the lien has not been recorded to date. The contractor has sued the couple for more than $50,000.
PACE provider: Renovate America (HERO)
Work: Roof repairs, windows, doors, patio, HVAC
Date of Work: July and August 2016
Contact: Alysson Snow, Legal Aid of San Diego
alyssons@lassd.org; 619-471-2655

A married couple, the husband is a former 95-year-old Tuskegee airman and the wife is 87 years old and is legally blind and deaf, jointly own their home. A contractor came to their home, initially simply to repair the back porch door. While there, contractor began to upsell clients. Contractor upsold clients to new windows, tear down and replacement of back patio enclosure, repair wood on roof, install a new, energy efficient brown roof, and arrange the installation of air conditioning and solar panels, all for a total price of $42,800.00. Couple initially refused as they could not afford that amount. Contractor represented that a financing program, called HERO, was a special government program to help fund home improvement projects. Contractor explained that he could arrange 20-year financing at about six percent interest through HERO,

which he represented verifies contractors, approves products, ensures fair market value pricing, and inspects work to ensure everything is exceptionally high quality.

The contractor made material false representations to induce the couple to agree to the additional, costly home improvements. This included lies about employing a veteran to work on the home, about what was included in the $42,800 price tag, lies regarding the need for permits, and about the license status of the contractors and subcontractors.

The couple signed a document with handwritten terms that contractor stated covered the terms he had verbally presented to them. Contractor then took back the document and continued to move around clients' home while writing down additional notes that contractor claimed were measurements. Contractor demanded $100 "to seal the deal." The $100.00 down payment was disclosed on the face of the document, but later did not appear as a credit in any of the subsequent funding. Contractor subsequently isolated wife to have her sign additional work orders.

The work performed was poorly done. The couple complained to Renovate America. Renovate's inspector documented litany of issues. The couple also hired their own inspector who also documented all of the problems. Renovate did not provide a plan for what was going to be done to fix the home. Renovate sent its agent with the contractor to the couples' home. Renovate's agent and contractor frightened wife and she told them to leave and talk to her "lawyer." They did not leave. They stood in front of couple's home and called her and daughters. Renovate's agent left voicemail messages that this was the "final resort." The couple, scared and intimidated, then reported the issues to the Contractors State License Board and complained to the District Attorney's office for financial elder abuse.

Contractor filed lawsuit against the couple (while they knew veteran husband was in hospital for pneumonia) for more than $50,000.

5. Bait-and-Switch for Spanish Speaking Family

Terms: Lien $41,801.31; annual assessment $2,249.95
PACE provider: Ygrene
Work: Solar panels
Date of Work: August 2016
Contact: Alysson Snow, Legal Aid of San Diego
alyssons@lassd.org; 619-471-2655

Home solicitor for contractor communicated with family in Spanish only. During the course of the presentation the family stated that they did not want a property tax assessment program to finance the solar panels. The contractor's agent stated they would arrange financing and repeatedly reassured them that the financing would not be a property assessment. The family had already rejected sales pitches from other contractors where financing through HERO.

The family agreed to enter into the agreement, but no translation was provided in Spanish. The family was not given a copy to review before signing and did not receive a copy after signing. The first time the family demanded a copy of the contract, the contractor provided advertisements and not the contract. The family eventually was able to get a copy of the contract, but did not know until then that this was a property assessment and financed by Ygrene.

The contractor's agent falsely represented the nature and terms of the financing. The home solicitation contract was defective. The notice of cancellation was non-compliant. The family cancelled the agreement pursuant to the home solicitation contract, but Ygrene and the contractor have not removed the lien and continue to seek property tax assessments.

6. No Income, No problem

Terms: Lien around $56,700
PACE provider: n/a
Work: Solar; roof, including flashings, ridges, down spout, rain gutter, rain barrels (two); stucco, spray wash, cool wall paint; window trim; take out two air conditioners; replaster hole
Date of Work: October 2016
Contact: Alysson Snow, Legal Aid of San Diego
alyssons@lassd.org; 619-471-2655

Homeowner was approached by two sales people from a contractor, Grenify, regarding home improvements. They told her the program was government funded and that she did not have to worry about any payments until November 2018, and told her it would be $200 to$300 a month starting in November 2018. This was false. Homeowner told them that she was unemployed and would be unable to pay for the loan. They told her not to worry as she would get a "huge" tax credit to help her pay for the solar panels. However, she does not qualify for a tax credit because she had no tax liabilities. Her home was completely paid off. Now when the new assessments come due she will not be able to pay the high assessment and may lose her home. The work agreed upon has not been complete. City of El Cajon called her and told her Grenify was approved to put solar panels in, she didn't even know they were going to do solar panels, this was the first she heard of it. Further research needed to determine if financing was through PACE.

7. Dementia and Fixed Income Not A Barrier to a PACE Loan

Terms: $45,195 loan, $2,778 fees, 8.35% (9.35% APR), taxes $5,471.03/year for 20 years
PACE provider: Renovate America
Work: Windows, cool coat stucco, rain gutters, patio covering
Date of Work: July 2015
Contact: Adelaide Anderson, Public Counsel
aanderson@publiccounsel.org, (213) 385-2977 x 231

According to a complaint filed in Los Angeles Superior Court, Ossie Hill, an 84-year old with dementia and health problems, agreed to pay over $45,000 for home improvements, despite the fact that her only source of income is Social Security, amounting to less than $1,000 a month.

After a four-hour sales pitch, the (illegally) unregistered home improvement salesperson—who has a history of felony convictions—convinced this senior citizen to sign four documents, which he represented were estimates but which the contractor later took the position were binding contracts.

Ms. Hill purportedly agreed to PACE financing for 19 vinyl windows at $805.00 each, stucco and wood exterior work for $27,650.00, and a patio cover for $2,250.00. The work was done shoddily, and her energy bills did not decrease, but her tax bill increased exponentially. The annual repayment amount comprises half of Ms. Hill's income. The total repayment amount, including fees and interest, was $109,000.

The PACE documents were signed electronically, and Ms. Hill did not receive a copy of the finance agreement until a relative intervened several weeks later. Ms. Hill could not afford the payments and filed suit to prevent foreclosure.

8. $25,000 Exterior House Painting for a Widow on Fixed Income

Terms: $46,000 loan, PACE lien fell through
PACE provider: n/a
Work: Windows and paint
Date of Work: n/a
Contact: Adelaide Anderson, Public Counsel
aanderson@publiccounsel.org, (213) 385-2977 x 231

Doris Tillman – who was profiled in the Los Angeles Times about living without water after it was shut off because she couldn't afford to pay it – was later pushed into a PACE loan for $23,150 for exterior paint (that costs $40/gallon retail), and $23,000—or $1,353 per window—for windows similar to those you could buy at Home Depot for approximately $200. She didn't see the financing details until they asked her to sign the completion certificate, and was shocked when she saw what she was going to have to pay, so she refused to sign. The PACE loan fell through and she is being sued on a mechanics lien. Public Counsel has filed an answer.

From the 2015 LA Times article: "Last August, the Los Angeles Department of Water and Power shut off the church-going widow's water service because Mrs. Tillman had fallen behind on her payments after a series of setbacks. She lost her job as a delivery driver, her leaky pipes left her with a $7,000 plumbing bill she's still paying off, and her Social Security check wasn't covering her expenses."

9. A Roof Without a Warranty and Useless "Cool" Wall - $50,000

Terms: $50,000, $6400/year.
PACE provider: n/a
Work: Roof, "cool wall"
Date of Work: n/a
Contact: Leigh E. Ferrin, Public Law Center (Santa Ana)
lferrin@publiclawcenter.org; (714) 541-1010 ext. 290

Two contractors going door-to-door told the client she had three leaks in her roof. She lived alone, had just undergone surgery, and was not feeling well. They told her a tax refund through a government program would cover most of the cost. They filled out the paperwork, explained only that her taxes would go up $200/month until she filed her taxes, and electronically signed her name. They said the roof had a 30 year warranty. But after the work was done, the contractor said the warranty didn't apply because her walls were damaged and didn't support the roof, which he showed by kicking a hole in the wall. He filled out a new contract for a "cool wall" for $32,000 and said the increase would be no more than $250/month for both the wall and roof, until she got her tax rebate. A month later, the client was notified that a finance company had denied a loan that she had not applied for. She later learned that her taxes increased by over $500/month and that the permit valuation for the work was $24,000 but she was charged more than $50,000. The work was poorly done and caused damage. A contractor friend said her previous walls were better quality.

10. E-Signing for Homeowner with Dementia

Terms: Taxes $337/month ($4,044/year); estimated assessment $40,000
PACE provider: Renovate America
Work: Solar power system
Date of Work: n/a
Contact: Carolyn Reilly, Elder Law & Advocacy (San Diego)
creilly@seniorlaw-sd.org, 858-565-1392 x 204

The homeowners purchased a solar power system that was financed through the HERO program. Their understanding was that it was supposed to cost $170 a month. However, the subsequent mandatory payments were $337 a month. The contractor set up the financing on a computer and electronically signed for the husband, who has dementia. According to the homeowners, the contractor should have been able to recognize her husband's condition and that he could not understand the e-contract.

11. PACE Loan Prevents Veteran Refinancing

Terms: n/a
PACE provider: Renovate America
Work: Energy upgrades (unspecified)
Date of Work: n/a
Contact: Carolyn Reilly, Elder Law & Advocacy (San Diego)
creilly@seniorlaw-sd.org, 858-565-1392 x 204

Elderly homeowner was convinced by HERO representatives to sign up for the HERO program for energy upgrades. However, he claims that he was never advised that he would not be able to refinance his home if he took part in the HERO program. Homeowner discovered that he would not be able to refinance his home when he attempted to get a loan through VA.

12. Bait (1.5% Financing) and Switch (26.99% Financing)

Terms: n/a
PACE provider: n/a
Work: Energy-efficient noise-reducing windows
Date of Work: n/a
Contact: Carolyn Reilly, Elder Law & Advocacy (San Diego)
creilly@seniorlaw-sd.org, 858-565-1392 x 204

Elderly homeowner received a phone call that explained he qualified for the HERO program. He was offered a deal for new energy-efficient windows that also reduced noise. There was to be 1.5% financing and no prepayment penalty. However, the windows installed were extremely low quality, provided poor insulation, and amplified noise. Homeowner discovered that the interest rate is 26.99% and a lien has been placed on his home. Although the homeowner was induced into the transaction by the offer of HERO financing, the loan was likely not funded through PACE because of the excessively high interest rate.

13. Glossing over the Details

Terms: n/a
PACE provider: Renovate America (HERO)

Work: Replacement windows
Date of Work: n/a
Contact: Carolyn Reilly, Elder Law & Advocacy (San Diego)
creilly@seniorlaw-sd.org; 858-565-1392 x 204

Elderly homeowner wanted to get his windows replaced and expressed interest in the HERO program. A HERO representative signed him up and indicated there would be a fairly low monthly fee, but did not convey that there was to be a tax lien on the house. The details of the agreement were glossed over by the HERO representative, with hidden costs and higher monthly payments embedded within the contract. The representative also requested an electronic signature from the homeowner, but did not inform them that the e-signature was going to bind him to a contract.

14. PACE Loan for a Sagging Roof

Terms: n/a
PACE provider: n/a
Work: Remodeling and fixing of roof
Date of Work: n/a
Contact: Carolyn Reilly, Elder Law & Advocacy (San Diego)
creilly@seniorlaw-sd.org, 858-565-1392 x 204

Elderly homeowners contracted to get extensive remodeling done with HERO financing. They hired a local remodeling company to do various projects, including fixing the roof. The company promised to completely tear down and rebuild the roof. However, when they finished, the homeowners found they did not actually replace the existing wood. The new roof sagged and created a hazard for the homeowners.

15. Vastly Overpriced Rewiring with an Electronic Signature

Terms: $18,000, 8.25% for 20 years
PACE provider: Ygrene Energy Fund
Work: Rewiring 1100 square foot house
Date of Work: n/a
Contact: Carmen Hill, Harambee Housing Information Program
citihousing20@aol.com, (323) 291-2100

"An electronic signature for paperwork for a senior who is not computer literate is criminal--no time to read the documents. He didn't understand that he was putting a lien on his house for 20 years or that he was being changed 8.25% interest rate.… This homeowner came to me because he was considering selling his home.… I have talked to several electricians and was told that $18,000 to install 200 amp service and correct wiring on a small, basic 1,100 square foot house was scandalous! The contractor was going to charge $25,000 for a new roof. I talked to… Ygrene Energy Fund to no avail."

16. Prepayment Penalty and Inability to Refinance

Lien: $34,290; 8.250% over 20-year term
PACE provider: Ygrene Energy
Work: Roof replacement; New windows
Date of work: 2015

Source: Smith et al v. Ygrene Energy Fund, Inc. et al, No. 3:17-cv-01258 (N.D. Cal.)

Alejandro and Felicia Marcey allege in the court complaint that: "Plaintiffs entered into a financing agreement through Ygrene to replace the roof and windows on their home at a cost of $34,289.97. However, pursuant to the terms of Plaintiffs' loan agreement, which includes a 20-year term and interest rate of 8.250%, Plaintiffs will actually pay a total of $71,154.83 for a new roof and windows." When homeowners attempted to refinance their home they were told that they could not do so until they fulfilled the loan and paid a prepayment penalty, which they could not afford to do.

17. Equity Stripped from Senior Needed to Pay For Assisted Living

Liens: $22,000 and $49,000, APR over 9%
PACE providers: Renovate America and other PACE provider
Work: Solar panels, etc.
Date of work: Oct., 2016
Source: Senior's daughter

NCLC was contacted by the daughter of an elderly woman who has now moved to assisted living. She has been diagnosed with cognitive impairment and dementia. In taking over her mother's financial affairs, including the sale of her house, the daughter discovered that she had been taken advantage of financially. During the title search, the realtor uncovered two property tax liens, one under HERO ($22K) and another PACE lien ($49K) by a different PACE provider. The $22K HERO assessment was apparent in the property tax records and also in her mother's receipts and papers, but nothing could be found on the $49K PACE financing. Because the PACE payments don't start until following year, the $49K assessment was not listed in the property tax records and was not discovered until the title/escrow process. The buyer was willing to assume the smaller HERO assessment, but not the larger $49K PACE assessment. They were forced to pay off the $49K out of the sale proceeds -- money that was to pay for nearly a year of her mother's care in the assisted living facility.

The daughter has been unable to get any receipts or financing paperwork from the solar panel installer. They never completed the interconnect agreement with the Department of Water and Power, so the solar panels aren't even working. The daughter has also questioned why her mother qualified to borrow the money, as she clearly could not afford the payments on her Social Security income. In addition to the solar panels, the daughter believes there was other work done that was "upsold." The daughter stated: "This is such a bad deal, all the way around. I'm sure my mother didn't understand what she was getting herself into …."

18. High APRs, Prepayment Penalties, and Interest Due after Payoff

Loya, et al, v. Western Riverside Council of Gov'ts, No. 5:16-cv-02478 (C.D. Cal.)

a. George and Judith Loya; Moreno Valley, CA
Lien: $16,359.95; 8.25% note, 10.8% APR; prepayment penalty
PACE provider: Renovate America
Work: Window replacements
Problem: Overcharging interest, admin fees, prepayment penalty.
Date of work: 2014

Required to pay interest past the date of loan payoff, excessive costs (paid 30% more than project costs for two years in HERO program); failure to timely credit payments; energy savings virtually non-existent.

b. Beth Simpson; San Diego, CA
Lien: $33,249.41; 8.35% note, 9.3% APR; prepayment penalty
PACE provider: Renovate America
Work: Solar?
Problem: Overcharging interest, admin fees
Date of work: 2016

Richarson, et al. v. County of Los Angeles, et al., No. 2:16-cv-08943 (C.D. Cal.)

c. Michael Richardson; Compton, CA
Lien: $48,777.71; 8.35% note, 10.8% APR;
PACE provider: Renovate America
Work: Roof, windows, stucco
Problem: Overcharging interest, admin fees, failure to credit payments
Date of work: Fall 2015

Ramos, et al v. San Bernadino Assoc. Gov'ts, et al., No. 5:16-cv-02491 (C.D. Cal.)

d. Richard Ramos; Highland, CA
Lien: $22,798.12; 9.25% note, 10.59% APR; prepayment penalty
PACE provider: Renovate America
Work: Roof, windows, stucco
Problem: Overcharging interest, admin fees, failure to credit payments
Date of work: 2014

In re Nwibe, 16-42643 (Bank. N.D. Cal.) Objection to Plan Confirmation by WRCOG

e. Mercy Nwibe; Tracy, CA
Lien 1: $18,800.67; 8.75% note, 10.63% APR; e-signed
PACE provider: Renovate America
Work: HVAC
Date of work: December 2014
Lien 2: ~$18,000; 8.95% note; 20 yrs; e-signed
PACE provider: Renovate America
Work: Windows, Doors, Skylights
Date of work: January 2015

Note same application date for both contracts; two different contractors

In re Lucero, 6:17-10205 (Bank. C.D. Cal.) Objection to Plan Confirmation by WRCOG

f. Ray and Cynthia Lucero; Nuevo, CA
Lien: $48,7777.71; 8.95% note, 10.55% APR;
PACE provider: Renovate America
Work: Solar

Date of work: 2014

19. The Myth of Net Energy Cost Savings #1

Lien: $22,638.18 with an APR of 9.42 percent over 20 years.
PACE provider: Renovate America
Work: Solar Panels
Date of work: 2015
Source: Bakersfieldnow.com

Elderly woman contacted multiple times from companies asking if she would be interested in solar panels. After being transferred to a supervisor, she was convinced to proceed with the installation with the impression that it would save her in the long run by reducing the cost of her electricity bills. However, after installing the solar panels, their monthly property tax had gone from $138 per month to $333 per month. In addition to that, the homeowner said she ended up paying a "true-up" bill to Pacific Gas and Electric Co. amounting to about $700 over the course of 2016. After the death of her husband and $22,000 lien on her home, she could no longer afford to stay in the first home she had ever owned and is now living with her son in Porterville while her home is on the market.

20. The Myth of Net Energy Cost Savings #2

Lien: $54,000
PACE provider: Renovate America
Work: Solar Panels
Date of work: 2016

Homeowner was laid off in 2015 and was looking to cut energy costs and add value to home. Renovate America's HERO Program offered the homeowner, who was unemployed, a $54,000 loan. It wasn't until after the solar panels were installed that he became aware that the loan was a tax assessment and generated a lien on the house. The homeowner is now attempting to short-sale his house, the mortgage is underwater, and "the money he saved by installing solar hasn't come close to covering his annual loan payments."

21. The Fake Free Government Program

Lien: $14,000, 9.51% APR, $40,000 total over 30 years
PACE provider: Renovate America
Work: Windows
Date of work: 2012
Source: Biggerpockets.com

Homeowner was not told about the tax lien. The contractor, Windor of Anaheim, said the windows were done for free through a government program and taxes would increase only due to the increased value of the home. Contractor was paid and the lien recorded even though there was an incomplete building permit and the work was never completed. The homeowner moved out of state and discovered the lien later when selling the property.

22. False Promises and No Net Energy Cost Savings

Lien: $37,000, 6.5%, $5000/year for 20 years
PACE provider: Ygrene Energy Fund
Work: Solar panels
Date of work: n/a
Source: CBS Los Angeles

A salesman told the Masons, who were nearing retirement, that solar panels would cut their utility bills in half and installation would be covered by government rebates, which they did not receive. They weren't told about the property tax assessment. "The Masons say their effort to go green has now derailed their retirement plans if it means they can't sell their home."

23. Free Money

Lien: No PACE loan taken
PACE provider: n/a
Work: Roof.
Date of work: n/a
Source: Comstock's Business Insight

The 'no money down' component of the program encourages contractors to overprice their bids. A contractor who recently approached Erin Strumpf and her husband to discuss a PACE loan for a new roof on their own house described the program as 'free money.' His bid came in at $20,000, almost double what they ended up paying through a non-PACE contractor.

24. Upselling to Maximum PACE Loan Amount

Lien: $23,000
PACE provider: n/a
Work: Landscaping front & back yards
Problem: Contractor tried to upsell based on size of PACE loan
Date of work: 2014
Source: Comstock's Business Insight

Benjamin Triffo, Elk Grove, CA, says his PACE contractor tried to upsell him, initially bidding $60,000 to do the job plus replace his driveway. Triffo told the contractor he didn't need a driveway, and it took several rounds of negotiation to get down to the $23,000 to which Triffo committed. Triffo says it was 'a little weird' to have the contractor know what size PACE loan he'd qualified for, which he thinks created an incentive for the contractor to bid high.

25. Surprise PACE Lien and Prepayment Penalty

Lien: $14,774
PACE provider: Renovate America
Work: A/C, tankless water heater, replacement ductwork
Date of work: n/a
Source: Sacramento Bee

When Patti Smith, 62, and living in a senior community, sought a refinance, she had to pay off a $14,774 HERO loan. "I was flabbergasted when our mortgage company told us we had a lien,"

said Smith, 62. “The contractor who pushed the HERO program never mentioned the word ‘lien.’ If he would have we would have never done it.” Smith said she also had to pay a penalty of $1,734.14 to HERO for paying off the loan early.

26. Cost of PACE Lien Far Outstrips Savings

Lien: $33,000
PACE provider: n/a
Work: Solar panels
Date of work: n/a
Source: Sacramento Bee

Door to door salesmen told Faye Moore, 75, solar panels would save money on her energy bill. The thousands she owes for annual property taxes "far outstrips those savings." “I think I’ve been had,” Moore said.

The following stories are self-reported by consumers and posted on the Yelp website used for reviews of businesses. NCLC does not have the capacity to verify the details of these stories.

27. Botched Job for $20k

Lien: $20,000
PACE provider: n/a
Work: Windows and doors
Date of work: 2015
Source: Yelp

Katherine C., explains that she took a loan from the HERO program to have new windows and doors installed by PCHS in Anaheim. “It has been over a year since PCHS has walked away from a botched job and I have a $20k bill added to my taxes. Hero has not been much help at all. Sadly.”

28. Little Help from PACE Program for Contractor Scam

Lien: n/a
PACE provider: Renovate America
Work: Windows
Date of work: Problem reported 6/3/2016
Source: Yelp

“Upon inspection of the sticker attached to the windows however it became evident that the product installed was not EnergyStar zoned for California,” says Shannon C. “I notified HERO [Renovate America] and Landmark and sent photos. Landmark vigorously argued over the telephone that the widows were approved despite evidence to the contrary…. Eventually they secured an email from Ply Gem the window manufacturer which claimed the installed windows were retroactively California compliant despite the sticker. I didn't believe this, and contacted the Department of Energy explaining my concern. They confirmed my suspicions that the windows were NOT approved for the EnergyStar program in California….

"Over time it became apparent that HERO, having secured my signature, were washing their hands of any problems relating to this project and responses to emails and phone calls ceased. I was forced, with much expenditure of time, effort and multiple phone calls to pursue replacement of the windows through Ply Gem, Eventually they agreed to send their own crew out to install California Energy Star compliant windows."

29. Big Mortgage Escrow Increase; Little Energy Savings

Lien: $35,000, 9%, $365/month (later $923)
PACE provider: Renovate America
Work: A/C, windows
Date of work: 2014
Source: Yelp

Jeff H. said: "Biggest scam next to insurance companies! Sales agents are very misinformative ….Overpriced cheap run of the mill products! … It took 2 years to be put on and caused my escrow account to become negative, which in turn caused my mortgage payment to increase by $923 a month not the $356 that was calculated! There was also no mention that 9% interest rate ….! The new HVAC system has not made a difference in my bills nor have the energy saving windows! Secondly my big tax kickbacks totaled a whopping 500$ deduction when we filed our taxes! A few things were not completed on the project I've been trying for 2 years to have completed …."

For more information, contact National Consumer Law Center Attorney John Rao at jrao@nclc.org or (617) 542-8010.

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