

Comments respectfully submitted by **PFM Financial Advisors, LLC**
Serving as Financial Advisor and Independent Registered Municipal Advisor to
Western Riverside Council of Governments for PACE Programs
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**INVITATION FOR COMMENTS ON
PROPOSED RULEMAKING
IMPLEMENTATION OF AB 1284
LICENSURE OF PACE PROGRAM
ADMINISTRATORS UNDER THE CALIFORNIA
FINANCING LAW
(PRO 02/17)**

INVITATION FOR COMMENTS

The Department seeks input from stakeholders in developing regulations to implement AB 1284. Interested parties may submit comments related to any area under which the Department has authority to adopt rules. In addition, the Department has identified various areas where rulemaking may be appropriate, desirable or necessary. Below, the Department has formulated topics and questions to assist interested parties in providing input on rulemaking. However, stakeholders are not limited to providing comments in the areas identified by the Department, and may comment on any potential area for rulemaking.

POTENTIAL TOPICS FOR RULEMAKING

Definitions

AB 1284 establishes terms under the CFL that identify the individual and entities that fall within the Department's jurisdiction. Are additional definitions needed? For the terms already defined, are any of the definitions unclear, and if so, why? Can the definitions be read to encompass an individual or entity not intended to be regulated under the licensing scheme? Does any definition result in ambiguity regarding whether an individual or entity falls within it?

- Additional definition for determination of "Ability to Pay" would be useful
- Clarification between "PACE Program" and "PACE Administrator" may be helpful to make clear that PACE Program may be 'named or branded' based on the administrator, but the program cannot offer funding unless authorized within a municipal agency authorized jurisdiction. Further a 'brand' may be offered in overlapping jurisdictions through multiple agency authorizations. For instance, HERO may be offered through either WRCOG or CSCDA. HERO is the program administrator, Renovate America's brand, but they are only able to offer funding to property owners that are located in a jurisdiction that has authorized the program to operate through one of the sponsoring agencies (i.e. WRCOG, CSCDA, among many).
- May want to incorporate additional PACE program team member definitions in order to confirm their exemption from licensure: including, but not limited to: Bond Counsel, Financial Advisors, Assessment Engineers / Administrators, Trustees / Paying Agents, Investors (to the extent that they are not also Program Administrators), County staff engaged in collection and distribution of property taxes.

Applications

The Department has an existing CFL application that contains general information necessary for the licensure of an individual or entity providing financial services to consumers. What types of information are unique to program administrators that a regulator would want included in an application, and why?

- Submission of information substantiating Program Administrator's financial condition PLUS confirmation document from committed capital sources to the extent that they intend to purchase bonds that will be the source of proceeds used to fund eligible improvements via assessment / special tax.

Annual Report Data

AB 1284 requires a program administrator to submit an annual report to the Department. What information should the Department be gathering from a program administrator, and why?

- Suggest review of operating programs' Consumer Protection Policies for identification of standard approval information collected and required for approvals in order to determine minimum requirements
- Maintenance of individual property owner confidential information is imperative

Advertising Standards

AB 1284 prohibits false, misleading, or deceptive advertising. Are there any advertising practices that raise consumer protection concerns? Why? What are ways the Department can protect against misleading advertising that is not initiated by a program administrator?

- PACE Administrators, Solicitors and Solicitor Agents should be expressly prohibited from advertising that provides or suggests any of the following: tax treatment of the obligation, implication of government subsidization, any misleading representation that implies that the property-owner will not be obligated to repay the amount borrowed plus interest and fees.
- It is important that this covers program administrator, solicitor and solicitor agents

Books and Records

AB 1284 requires a program administrator to maintain books and records. What books and records are unique to the PACE industry? How long should these records be maintained? Why?

- Information collected at origination of the obligation that was used to determine "ability to repay" should be included in records maintained for the term of the obligation plus three years.

Complaint Processes and Procedures

What are reasonable processes that can be implemented to help a consumer resolve his or her complaints? Have homeowners encountered hurdles to having their complaints addressed? What are these hurdles, and what processes can eliminate them? Why?

- Defer to Program sponsors (bond issuers) for this

Unfair Business Practices

AB 1284 prohibits a program administrator from engaging in unfair business practices. Are there any unfair business practices occurring? How can they be prevented?

- Program administrators need to enforce that solicitors and solicitor agents are not provided the property owners' maximum qualified borrowing amount prior to initiation of application for funding.
- There needs to be a way for the program sponsoring bond issuer to confirm that the same project is only funded once to prevent a solicitor or solicitor's agent from receiving payment more than once for the same project submitted through multiple program administrators, resulting in multiple assessments recorded for the same property / project.

Periodic Review Standards

AB 1284 requires a program administrator to conduct a periodic review of its PACE Solicitors at least every two years for compliance with the requirements of AB 1284. What should be required in this review? Why?

- Solicitors and their agents should have re-fresh testing every two years to ensure maintenance of authorized procedures
- Solicitors and agents not passing the re-fresh test after two attempts within a 60 day period of their 2nd anniversary shall be subject to full re-training and testing

Solicitor Enrollment Standards or Processes

AB 1284 sets forth enrollment standards for PACE solicitors and PACE solicitor agents. What types of acts or practices, and how often must they occur before a program administrator should deny enrollment to a PACE solicitor or PACE solicitor agent? Why?

- Suggest that DBO maintains aggregated database of enrolled and suspended solicitors and agents so that a solicitor suspended by one PACE administrator cannot re-enroll through another PACE administrator unbeknownst to the Program sponsor bond issuer.

Solicitor Monitoring Standards

AB 1284 requires a program administrator to monitor a PACE solicitor and PACE solicitor agent's compliance with applicable law. What types of procedures provide for this monitoring? Why?

- Again, conformity of solicitor / agent data aggregated across program administrators.

Cancelling Enrollment and Notifying the Department

AB 1284 requires a program administrator to establish and implement a process for canceling the enrollment of a PACE solicitor or PACE solicitor agent, and to notify the Department. What reasonable standards should be included in this process? Why?

- Conformity of solicitor / agent data aggregated across program administrators is a key value that DBO can provide to program sponsoring bond issuers.

Education Program

AB 1284 requires a program administrator to provide each PACE solicitor agent with six hours of education on specified topics. What minimum standards should this training include? Why?

- Review existing program Consumer Protection Policies for alignment of minimum requirements.

Underwriting

AB 1284 contains minimum standards that a property, a property improvement, and a borrower must meet to qualify for a PACE assessment agreement. Do any of these standards require clarification, and if so, which ones, and why?

- In addition to the data used, program administrators should be required to meet defined methodology when using this information for determination of ability to pay.

SB 242

AB 1284 authorizes the Department to require licensee compliance with the requirements of SB 242 (except the reporting requirement), and the financial disclosure requirements, and minimum standards, set forth in Streets and Highways Code sections 5898.16 and 5898.17. Are there any requirements in these laws that require clarification by rulemaking?

- See notes from WRCOG

Exemptions from Enrollment

AB 1284 authorizes the Commissioner to exempt any class of persons from the enrollment requirement for PACE solicitors and PACE solicitor agents. Is there any class of persons that should be exempt? Is there a public benefit to having a solicitor for a commercial assessment agreement undergo six hours of training directed at protecting consumers?

- Confirmation that other program implementation team members are exempt from licensure: including, but not limited to: Bond Counsel, Financial Advisors, Assessment Engineers / Administrators, Trustees / Paying Agents, Investors (to the extent that they are not also Program Administrators), County staff engaged in collection and distribution of property taxes.