

Financing Program Support for ARRA Recipients

PACE Legal Issues December 15, 2009



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Webinar Outline



- What we will NOT cover
- Basics of Property-Assessed Clean Energy (PACE)
- Key issues:
 - Defining "Public Purpose"
 - Seniority of PACE Liens
 - Consumer Lending Laws
 - Risks to Local Governments
- PACE Policy Framework Update

What We Will Not Cover



- National Environmental Policy Act requirements
- Davis Bacon Act requirements

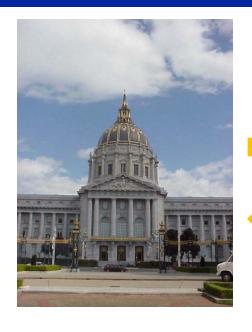
Guidance on NEPA and DBA requirements is currently going through an internal review process and when available will be posted at:

http://www.eecbg.energy.gov/about/program_guidance.html



Property-Assessed Clean Energy (PACE)





\$\$ Upfront

\$\$ Repaid on tax bill



- Creates financing district & approval process
- Provides upfront capital
- Attaches repayment obligation to the building

- Identifies work & chooses contractor
- Repays financing as a line item on the property tax bill
- Repayment obligation transfers with ownership

States that have Passed PACE Legislation

California

(A.B. 811;

A.B. 474)

Colorado

(H.B. 08-1350)

• Illinois (S.B. 583)

• **Louisiana** (S.B. 224)

Maryland

(H.B. 1567)

Nevada

(S.B. 358)

New Mexico

(S.B. 647; H.B.

572)

New York

(A.B. 8862; A.B.

40004A)

North Carolina

(S.B. 97; H.B. 1770)

Ohio

(H.B. 1)

Oklahoma

(S.B. 668)

Oregon

(H.B. 2626)

Texas

(H.B. 1937)

Vermont

(Act 45; H. 446)

• Virginia (S. 1212)

• Wisconsin (A.B. 255)

Source: DSIREUSA.org. See DSIRE's PACE Financing site for updated information: http://www.dsireusa.org/incentives/index.cfm?EE=1&RE=1&SPV=0&ST=0&searchtype=PTFAuth&sh=1



Defining "Public Purpose"

- •Is it a public purpose to levy taxes to pay for clean energy improvements on private property?
- •How do you get a legislative finding that PACE financing has a public purpose, and why is this important?
- •What are the limits on included improvements (i.e., upgrade electric board to accommodate solar panel load; trim trees to maximize solar exposure, etc.)?

Seniority of PACE Liens

- Are PACE liens entitled to the senior lien status afforded other tax liens? What steps need to be taken to establish a PACE lien?
- Do pre-existing lenders have constitutional due process rights? Is lender consent required? Is notice required? How have existing programs addressed this issue?
- What happens in the case of default?



Consumer Lending Laws

- Is a PACE assessment a "loan"?
- Do consumer lending laws apply to PACE assessments? What other legal requirements are triggered by PACE financing (i.e., Truth in Lending Act requirements)? What are best practices for protecting program participants?
- Who originates loans and what underwriting criteria or other requirements must be followed?



Risks to Local Governments

- Do PACE programs put the local government's general fund at risk? How can local governments protect themselves from liability?
- Should local agencies recommend contractors, improvements, validate installation costs?

PACE Policy Framework



- Increased attention to PACE financing programs from the Administration
- Interagency working group created to analyze PACE financing programs and provide guidance on consumer & lender protections
- The PACE Policy Framework contains a set of protections that are a priority for the Administration as programs are developed
 - Not a federal statute or regulation
 - Adherence is strongly encouraged
 - Some flexibility is warranted and deviations will be necessary on certain items
 - DOE requests that ARRA grantees explain how their underwriting criteria addresses specific consumer and lender protection concerns
- DOE is working with existing programs and those designing pilot programs to collect information and provide additional guidance when appropriate

PACE Policy Framework available here:

http://www.whitehouse.gov/assets/documents/PACE_Principles.pdf

Resources



Send feedback & requests for technical assistance on financing to:

Bret Kadison – <u>financingrapidresponse@ee.doe.gov</u>

Resource Portal for Financing Programs (see page on PACE)

http://www.eecbg.energy.gov/solutioncenter/financialproducts/default.html

How to Guide for PACE Programs

http://rael.berkeley.edu/files/berkeleysolar/HowTo.pdf

Federal Government's Policy Framework for PACE Financing Programs

http://www.whitehouse.gov/assets/documents/PACE_Principles.pdf

State legal authority for PACE programs is tracked by the DSIRE database

http://www.dsireusa.org/incentives/index.cfm?EE=1&RE=1&SPV=0&ST=0&searchtype=

PTFAuth&sh=1

Upcoming and past webinars:

http://www.eecbg.energy.gov/solutioncenter/webcasts/