



Financing Program Support for ARRA Recipients

PACE Legal Issues
December 15, 2009

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- 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



- **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)
- **Maryland**
(H.B. 1567)
- **North Carolina**
(S.B. 97; H.B.
1770)
- **Texas**
(H.B. 1937)
- **Colorado**
(H.B. 08-1350)
- **Nevada**
(S.B. 358)
- **Ohio**
(H.B. 1)
- **Vermont**
(Act 45;
H. 446)
- **Illinois**
(S.B. 583)
- **New Mexico**
(S.B. 647; H.B.
572)
- **Oklahoma**
(S.B. 668)
- **Virginia**
(S. 1212)
- **Louisiana**
(S.B. 224)
- **New York**
(A.B. 8862; A.B.
40004A)
- **Oregon**
(H.B. 2626)
- **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?



- 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

Send feedback & requests for technical assistance on financing to:

Bret Kadison – financingrapidresponse@ee.doe.gov

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/>