

DOE Best Practice Guidelines for Residential PACE Financing: Consumer Protections



DOE Best Practice Guidelines for Residential PACE Financing Programs

On November 18, 2016, DOE released Best Practice Guidelines for Residential PACE Financing Programs.

- Updates previous DOE guidance from May 2010
 - Reflects the evolving structure of the PACE market
 - Incorporates lessons learned from PACE programs that have been successfully implemented
 - Provides additional guidance on consumer protection, contractor management, and quality assurance

Best Practice Guidelines for Residential PACE Financing Programs can be incorporated and followed by States, Local Governments, PACE program administrators, and contractors to plan, develop, and implement programs and improvements that effectively deliver home energy and related upgrades.

Timeline of Events

- October 2009-Whitehouse Issues “Policy Framework for PACE Financing Programs”
- May 2010- Fannie and Freddie Issue “Lender Letters”
- May 2010- DOE issues “Guidelines for Pilot PACE Financing Programs”
- July 2010- FHFA Issues “Statement on Certain Energy Retrofit Loan Programs”
- July 2010-OCC Issues “Supervisory Guidance” to National Banks
- July 2010: The PACE Assessment Protection Act Introduced and Referred to Committee
- Fall 2010: Florida, California, and New York File Lawsuits

Timeline of Events

- February 2011- FHFA's Second Directive to Fannie and Freddie
- August 2011- California District Court Directs FHFA to Conduct Formal Rulemaking
- July 2011- PACE Assessment Protection Act Introduced and Referred to Committee
- June 2012- FHFA Publishes Proposed Rule and Appeals California District Court Ruling
- March 2013- Circuit Court Overturns Prior Decision Direction FHFA to Conduct Rulemaking
- September 2013- CA Governor Announces Intent to Create PACE Reserve Fund to FHFA

Timeline of Events

- December 2013-Mel Watt Confirmed as New FHFA Director
- March 2014- California Establishes \$10M Loan Loss Reserve Fund
- March 2014- PACE Assessment Protection Act Introduced and Referred to Committee
- July 2016-FHA and VA issued new guidance supporting the use of R-PACE on FHA and VA insured mortgages.
- July 2016-DOE issued Draft Best Practice Guidelines for Residential PACE Financing (30 Day comment period)
- November 2016-DOE issued Best Practice Guidelines for Residential PACE Financing

Summary: Consumer Protection Concerns

- Homeowner eligibility, including reviewing household income and debt obligations
- Contractor management and oversight procedures
- Maintaining homeowner legal protections
 - Contractor misrepresentation and fraud
 - Access to dispute resolution and legal recourse mechanisms
- Low-income household screening
 - disclosures, project scope, eligibility for direct assistance (e.g., weatherization)
- Foreclosure protections
 - Forbearance, modification mechanisms for temporary, permanent hardship scenarios

Ensuring appropriate screening, safeguards and oversight mechanisms are followed for low-income households

Homeowner eligibility

- Ensure borrowers can afford PACE assessments; underwriting that includes income and debt obligations
- Include triggers for additional underwriting

Disclosures, verification of terms

- Require disclosures equivalent to Truth-in-Lending with additional disclosures specific to PACE transactions
- Require recorded phone call prior to authorization of financing to verify scope of work, PACE terms and repayment structure, and

Default and foreclosure prevention

- Rigorous underwriting, including thresholds for large projects for low-income
- Recommend programs consider developing mechanisms to prevent foreclosure, including temporary forbearance and modification of the assessment

Protect consumer rights to access to remedies for fraud or violation of the law

- Require customer complaint resolution procedures
- Establish state regulatory oversight including contractor licensing and management

Stakeholder Comments: Summary of Key Themes and Recommendations (1 of 2)

Themes and Topic Areas	Stakeholder Recommendations
<p>Allow flexibility in use of PACE financing for energy efficiency, renewable energy, water efficiency and health and safety measures</p> <ul style="list-style-type: none">▪ Cost effectiveness requirements▪ Ability to finance capital replacement, reactive measures▪ Role of energy assessments▪ Align DOE guidelines with industry resources and best practices	<ul style="list-style-type: none">✓ Recommend use of eligible measure lists to determine measure eligibility✓ Allow flexibility for other public purpose measures (e.g. seismic, wind, water)✓ Enable use of PACE for unplanned projects (e.g., emergency HVAC replacement)✓ Revise cost-effectiveness language to exclude health and safety measures; maintain requirement to limit PACE term to life of measures
<p>Ensure strong consumer protections:</p> <ul style="list-style-type: none">▪ Property owner eligibility and transparent consumer disclosures▪ Documentation of the PACE transaction, robust quality assurance and contractor management and oversight mechanisms▪ Consumer protections for low income households (detailed on next slide)	<ul style="list-style-type: none">✓ Optional use of energy assessments and completion certificates✓ Align DOE guidelines with industry standards✓ Include minimum trade certification resources✓ Adopt standard disclosure forms✓ Require pricing reviews for each project

Stakeholder Comments: Summary of Key Themes and Recommendations (2 of 2)

Themes and Topic Areas	Stakeholder Recommendations
<p>Protect lenders and ensure compatibility with real estate transactions</p> <ul style="list-style-type: none"> ▪ Record PACE assessments in public record ▪ Document improvements, incorporate in market valuation ▪ Ensure efficient mechanisms to transfer assessment in the sales process 	<ul style="list-style-type: none"> ✓ Align PACE with other forms of collateral-based lending ✓ Document PACE assessments and improvements in public records ✓ Coordinate PACE with mortgage servicing and appraisal processes
<p>Ensure additional protections, policies and procedures are in place for low income communities and households</p> <ul style="list-style-type: none"> ▪ Avoid creating unaffordable financial obligations for LI households ▪ Coordinate delivery with weatherization and other direct assistance or incentives ▪ Marketing practices and contract oversight 	<ul style="list-style-type: none"> ✓ Include income, debt obligations in PACE qualification reviews ✓ Coordinate PACE delivery with low-income assistance programs, such as weatherization assistance ✓ Adopt stringent contractor oversight mechanisms and conduct third party reviews with homeowners
<p>Collect and report data while maintaining safeguards for consumer data security and privacy</p> <ul style="list-style-type: none"> ▪ Maintain transparency around PACE assessments in public records ▪ Protect consumer data privacy, security 	<ul style="list-style-type: none"> ✓ Document PACE assessments in public records ✓ Regularly evaluate PACE program impacts and disseminate findings ✓ Ensure policies and procedures for data security and privacy are established

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Topic: Ensure Strong Consumer Protections: Eligibility, Consumer Disclosures and Reporting

Summary of Comments Received

- Align DOE guidelines with industry standards
- Align DOE guidelines with consumer credit protection and mortgage disclosures
- Increase the right to cancel to three days
- Adopt standard disclosure forms
- Require pricing reviews for each project

Summary of Changes Incorporated

- Expanded number of disclosure items
- Added recommendation to include verification of terms via live phone call that is recorded
- Added recommendations on consumer credit protections
- Revised language to afford a “multi-day” right to rescind
- Created new section on reviewing property owner income and debt obligations
- Included fair pricing reviews for each project

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Topic: Ensure Strong Consumer Protections: Contractor Management and Oversight

Summary of Comments Received

- Concerns about contractors not following program guidelines and policies
- Concerns about pricing
- Concerns about poor quality workmanship and mechanisms for recourse
- Concerns regarding adequacy of contractor compliance, training, and oversight functions at the state and local levels

Summary of Changes Incorporated

- Enhanced section on contractor management, quality assurance, and oversight roles
- Added recommendation to include market pricing reviews
- Added links to contractor certification resources and programs
- Require all projects be verified via a live phone call with the program
- Require all contractors, subcontractors and independent contractors to register with the PACE program
- Incorporated contractor quality assurance with random, on-site inspections
- Verify final permits issued prior to disbursement of funds

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Topic: Develop Additional Protections for Low Income Households

Summary of Comments Received

- PACE assessments increase risk of foreclosure for low income homeowners
- PACE assessments are higher cost than other options
- PACE underwriting must include ability to repay beyond home equity
- PACE programs must include adequate educations and disclosures for consumers
- PACE programs must provide adequate recourse for poor equipment performance or other installation failures

Summary of Changes Incorporated

- Strengthened consumer protections overall
- Created new section: *Additional Consumer Protection Considerations for Low-Income Households*
 - Recommend PACE programs review household income and debt obligations in eligibility review
 - Recommend providing a coordinated portfolio of information with other energy offerings such as WAP, LIHEAP, and utility programs
 - Made recommendations on additional quality assurances such as independent review of contractor SOW

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Topic: Protect Lenders and Provide Consumer Credit Disclosures

Summary of Comments Received

- PACE assessments could impact servicers and holders of first-lien mortgages in event of default or foreclosure
- **Recommendations to treat PACE assessments as consumer credit transactions secured by a dwelling, subject to consumer protection laws**
- Address the impact lien priority may have on foreclosure or future sale of the home

Summary of Changes Incorporated

- Require PACE assessments to be recorded in public records
- Notify mortgage servicers when PACE assessment placed on properties
- **Recommend consumer disclosures equivalent to similar collateral or credit-based financing,**
- **Added review of income and debt obligations**
- Added language on non-acceleration of PACE assessments in foreclosure, consistent with FHA policy and guidance
- Recommend programs establish a debt service reserve fund for bondholders, and consider loan loss reserve for lenders; evaluate PACE portfolio performance on regular basis

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