

MEETING  
STATE OF CALIFORNIA  
DEPARTMENT BUSINESS OVERSIGHT

**PACE REGULATIONS STAKEHOLDER MEETING**

1515 K STREET  
5TH FLOOR, SUITE 550  
SACRAMENTO, CALIFORNIA

FRIDAY, DECEMBER 1, 2017

9:30 A.M.

APPEARANCES

DEPARTMENT OF BUSINESS OVERSIGHT

Jan Owen, Commissioner

Scott Wyckoff, General Counsel

Indira McDonald, Deputy Commissioner, Legislation

Ed Gill, Senior Deputy, Division of Corporations

Lila Mirrashidi, Deputy Commissioner, Legal

Colleen Monahan, Senior Counsel

Jim Sweeney, Deputy Commissioner, Strategic Support

Eric Davies, Special Administrator, California Financing Law

PUBLIC

Mike Lemyre, Senior Vice President, Ygrene Energy Fund

Cliff Staton, Executive Vice President, Renew Financial

Demetra McBride, County of Los Angeles

Jennifer Sperling, Bet Tzedek Legal Services

Jith Meganathan, California Low Income Consumer Coalition

Bob Giles, CEO, PACE Funding Group

Casey Dailey, Western Riverside Council of Governments

Joe Levaitch (phonetic), Spruce Finance

Ari Matusiak, Renovate America

Karen Lang, on behalf of Joe Kelly, Treasurer and Tax Collector, County of Los Angeles

Hugh Slayden, Senate Insurance Banking and Financial Institutions Committee

David Gabrielson, Executive Director, PACENation

Richard Eberle, Legislative Analysis Committee for the California State Auditor-Controller's Association

APPEARANCES (CONT.)

PUBLIC (CONT.)

Lisa Sitkin, Senior Staff Attorney, National Housing Law Project

Dan Mierzwa, Yuba County Treasurer-Tax Collector

Jenine Windeshausen, Placer County Treasurer-Tax Collector and PACE Program Administrator

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MS. OWEN: Okay. Good morning this is going to be a long day. You just heard me that saying we don't have phone service available. And we apologize for that but there will be a transcript available and we will post that on our website.

So, good morning, my name is Jan Owen and I am the Commissioner for the Department of Business Oversight. I would like to thank you all for coming. I am sad and sorry that we can't get you all, get your other colleagues on the phone but, you know, Murphy's Law. And it is Friday morning.

So, I'd like to introduce my staff. I want to -- you all need to understand how important we think this is.

MS. OWEN: We'll start with introductions and so you understand how important we think this is. You have the senior staff and the people that truly will be doing the work. I would like to introduce Scott Wyckoff who is the General Counsel. Scott raise your hand, people may not know who you are. To his right is Indira McDonald. You saw Indira at the last session. Indira is our Deputy Commissioner for Legislation. To her right is Ed Gill. He is Senior Deputy for the Division of Corporations where this law will be housed. To my left is Lila Mirrashidi. You saw her on that fateful Friday night and she is the Deputy

1 Commissioner of Legal. To her left is Colleen Monahan. For  
2 some of you that have been doing work with the former  
3 Department of Corporations and the Department of Business  
4 Oversight you will be familiar with Colleen's excellent  
5 work. Colleen is truly the woman that wrote a lot of this  
6 legislation. We are very, very proud to have her with us on  
7 our team. And Colleen is a senior counsel. And to her left  
8 is the head of our strategic support which is Jim Sweeney.  
9 Many of you know Jim from his previous lives and I'll say  
10 multiple lives. So you have Eric, who is heading up the  
11 California Financing Laws application process, will be  
12 joining us soon.

13           So, I just need you to understand the importance  
14 that we put on this and clearly from your attendance the  
15 importance that you take this new licensing scheme for PACE.  
16 Governor Brown signed the Legislation and it truly is  
17 establishing the nation's most extensive set of consumer  
18 protections for California homeowners.

19           DBO will draft regulations to implement this law.  
20 And that's what this meeting is about today what DBO is  
21 doing. We are gathering information. Many of you that are  
22 on our list got last night or yesterday an invitation to  
23 comment on proposed regs. In doing that, what does that  
24 mean? That means we don't start the regulatory process  
25 through the Office of Administrative Law. It means we want

1 to hear from you all first. And we want to hear what you  
2 are going to talk about and what is important to you.

3 Most of my lending or other types of law lend  
4 itself to regulations. This is important that we have you  
5 all here so that we can start talking about regulations.  
6 This isn't an opportunity or a time to re-evaluate the law.  
7 If you are interested on changing the law that goes across  
8 the street to the Capitol and you will deal -- and we will  
9 offer to everyone technical assistance. But I do not -- if  
10 you guys have opportunities to talk to us, don't want us to  
11 talk about changing the law at this point. That's not what  
12 we are here to do. The Legislature gave us a policy, gave  
13 us a new lending -- or, excuse me, a new structure and now  
14 we have to figure out how to implement it.

15 As you know we have specific timelines in that law  
16 and I want -- we have to hurry. So, many of you that have  
17 worked with regulatory agencies before, for us to even send  
18 out an invitation to comment within 90 days of signing of a  
19 piece of legislation is pretty darn huge. You know, all of  
20 us have gray hairs over this.

21 And so, but it is important for us to do this.  
22 It's important for us to hear from you. Because we have so  
23 many, we are limiting you to three minutes and that's kind  
24 of a pain. But this is not your only chance to talk. You  
25 can write to us all you want to. You can send us emails.

1 You can please comment on the invitation to comment,  
2 invitation about how to comment on our regs. INR regs, we  
3 will be -- we have established certain things we are going  
4 to look at. The license application, so we need to put in  
5 the regs what that's going to look like. The annual report,  
6 what the requirements of PACE administrators will be for the  
7 annual report.

8 Advertising standards. Books and records authority.  
9 When the regulator asks for books and records this is --  
10 what does that mean? What's our authority and what can we  
11 ask and what we'll ask for, more importantly for you all.

12 Complaint procedures. When consumers come to us and  
13 complain what are the procedures? What are the processes?  
14 What are companies' duties? Deceptive acts and practices.  
15 Periodic review standards, so what is that? That's  
16 examinations. What are the standards that I -- that me and  
17 my staff have to adhere to, but also the standards we expect  
18 from the companies' solicitor enrollment, monitoring,  
19 cancelling and notification standards. So, how are you  
20 going to manage your solicitors or your contractors?

21 And then we want to have some underwriting  
22 clarifications in the regs. That's a lot just for those of  
23 you that have been doing this.

24 Thank goodness you are here Mr. Davies. Barely.  
25 Exactly. Eric Davies who is Licensing Specialist for the



1 Consumer Financing Law came in from San Diego. So, we are  
2 pleased to have him.

3 So, let's talk a little bit about the timing. As  
4 of yesterday we are collecting writing comments. For this  
5 first round in the invitation for comment we have stopped.  
6 We are asking that you comment before January 5th. Short  
7 time frame. You guys are in the same time frame that we  
8 are, "short, short, short." But again don't think this is  
9 the only time you will be able to officially comment to us.

10 Please remember that your every single comment  
11 that you write is public. So, that will be -- it will be in  
12 the public domain, so don't forget that.

13 It is our plan to issue the formal notice of  
14 rulemaking action with the Office of Administrative Law by  
15 7-1 of 2018. So that's why my hair is gray. And PACE  
16 program administrators have to be licensed by 1-1 of 2019.  
17 So, we will be providing you a deadline or a guideline of  
18 timing later on in 2018 so that you may receive a license by  
19 1-1 of 2019 and you can do your business.

20 I want to make sure I get everything. There will  
21 be posted on our website -- oh I'll talk about money, I  
22 think that's important. Frequently asked questions about  
23 PACE: we're getting questions, we're getting a lot of  
24 questions into our consumer hotline so we are going to  
25 publish FAQs on PACE. We think that makes some sense.

1 Again, remember, we are the regulator, so these aren't  
2 advertising, these aren't marketing. These are boring  
3 responses to frequently asked questions.

4 Billing and assessments. Once licensed, the  
5 program administrators will be required to pay an annual  
6 assessment and will be billed an hourly rate for all  
7 department exams. Exams are currently billed at \$80 dollars  
8 an hour per person. The annual assessment required to be  
9 paid by all these licensees is, and this is important, a pro  
10 rata share of all the Department's costs and expenses to  
11 administer the California Financing Law.

12 So, what does that mean? Basically, that means  
13 there are 43, 44 hundred CFL licensees?

14 (Off-mic comment)

15 MS. OWEN: Five or six thousand? So, instead of  
16 having 13 licensees that you have to do a pro rata share,  
17 now you're lumped in with 56, or 52 hundred licensees.  
18 Makes it a whole lot cheaper, number one. But also it makes  
19 it fair. If we were going to license you and have you start  
20 paying a whole lot of money, this wasn't going to work. And  
21 we didn't think that that made sense. So you will, the pro  
22 rata share is a portion of your license's gross income, to  
23 aggregate gross income of all other licensees and candidly  
24 it may --

25 (Off-record comments)

1           Okay, let me go through that again. Annual  
2 assessment is required to be paid by all these licensees and  
3 it is a pro rata share of all the Department's costs and  
4 expenses to administer the California Financing Law. The  
5 pro rata share is a portion that a licensee's gross income  
6 bears to the aggregate gross income of all licensees, and  
7 naturally it will vary year to year. The minimum assessment  
8 is two thousand dollars a year. Ah, two hundred and fifty  
9 dollars. I was trying to change that, but that didn't work.  
10 Okay, two hundred and fifty dollars. Sorry, sir.

11           For example, let me give you an example because  
12 that will help, this year the gross income for all CFL  
13 licensees was about 12 billion dollars. If a licensee's  
14 gross income was about 7 million, the annual assessment  
15 would be 2000 dollars. Does that make sense? Annual  
16 assessment invoices go out in September and payment is due  
17 by October 31st. We fine licensees that don't pay on time  
18 and we revoke their license for those who fail to pay at  
19 all.

20           And on average, I'll just give you some data, on  
21 average we lose 40 to 50 licensees a year where people just  
22 refuse to pay their bills. They may be ongoing businesses,  
23 but my staff isn't supposed to be hounding these guys. You  
24 want to do business in California, you pay your fee. It's  
25 kind of that simple.

1           Since I never follow what I'm supposed to do on my  
2 talking points, which makes staff crazy, I think that's all  
3 I want to say. And ask that we start by rows of people that  
4 want to talk first. And since I know many of you, if you  
5 don't want to get up and talk but I think you have something  
6 to say, I may call you out. Stan Wieg. And would like to  
7 hear from you.

8           So, with that let's start with the front row and  
9 the woman to your left. Would you like to make any public  
10 comments? Stan? I'm sorry? And we need you to have you go  
11 up to the podium.

12           MR. WIEG: I have no comment right now.

13           MS. OWEN: Lexi? You guys are doing absolutely  
14 exactly what I said you weren't going to do.

15           Sir? Good morning.

16           MR. LEMYRE: Good morning, Commissioner and staff.  
17 My name is Mike Lemyre, Senior Vice President of Ygrene  
18 Energy Fund. On behalf of Ygrene, I'm pleased to be here  
19 today along with our CEO, Rocco Fabiano, and several of our  
20 colleagues to participate in the kickoff of what we consider  
21 a new era in PACE.

22           Ygrene is one of the oldest and largest PACE  
23 administrators in the country and we have financed over 40  
24 thousand projects and a billion dollars. I say that because  
25 we have successfully worked with and operated under the

1 supervision of hundreds of cities and counties, and multiple  
2 JPAs, and other subdivisions of the State of California over  
3 the last seven years. And our management team,  
4 collectively, has decades of experience in working regulated  
5 financial service companies and industries and we truly  
6 understand the value and benefits of a well-regulated  
7 industry.

8           We have a model track record of contributing to  
9 the development and implementation of consumer protection  
10 laws, policies, program rules that underpin this vital  
11 component of this State's environmental policy and the  
12 component of the marketplace for consumers. And my  
13 colleagues and I look forward to supporting and  
14 collaborating with you and your teams as we undertake the  
15 rulemaking process for AB 1284.

16           To keep my comments brief -- well, you will  
17 undoubtedly hear many stakeholders today and through this  
18 process with any number of issues. We have just two points  
19 today that I'd like to list or voice for the record. We  
20 respectfully make these suggestions. We urge the department  
21 to work judiciously to promulgate the rules, particularly  
22 the ability to pay criteria, as soon as possible. So, we  
23 appreciate your transparency on your expected timeline.

24           It is particularly important or critical that  
25 local governments and administrators, in particular, have

1 this clarity so that we are able to implement, through  
2 operational processes, our technology systems, and our  
3 channels that go to market to reach consumers with the PACE  
4 product, that we're able to comply with not just the spirit  
5 but the technical aspects of the regulations.

6           And then second, hope that we don't lose sight of  
7 the fact that PACE is not just merely a financing option, a  
8 consumer finance option, although it certainly is, but it is  
9 a creation of the state and local laws, and it serves a  
10 declared public purpose. There are 12 or actually now 13  
11 PACE statutes that have been passed in California expressly  
12 establishing the instrumentality of California's energy  
13 environmental policy through this option.

14           So, I think that it is critical that regulations  
15 protect consumers but also respect these attributes of PACE  
16 as we, all of us in this room, and many on the phone and  
17 many throughout the last 10 years now, have brought this  
18 product to the market. So, as new partners in developing  
19 the regulations and rules of the road, going forward we want  
20 to bring that history, that experience and contribute  
21 constructively to this process. We appreciate everyone's  
22 time and efforts and ongoing ones in the future. Thank you  
23 very much for this.

24           MS. OWEN: Thank you. Is he speaking for all of  
25 Ygrene? Sir? Good grief, this could be a short meeting.

1 Who's buying coffee after this? Excuse me, sir? We are  
2 going to go around. It's just easier this way, guys.

3 MR. STATON: Good morning, Commissioner.

4 MS. OWEN: Good morning.

5 MR. STATON: My name is Cliff Staton. I'm the  
6 Executive Vice President of Renew Financial. And our CEO,  
7 Cisco DeVries, actually came up with the idea of PACE almost  
8 ten years ago when he was chief of staff to the Mayor of  
9 Berkeley, and left the city to set up Renew in order to  
10 establish an administrative PACE programs for local  
11 governments. And we now represent work with about 400 local  
12 governments throughout the State and covering about 90  
13 percent of the state's population.

14 And, really, thank you for the opportunity to be  
15 here as we embark on a new era of PACE. I mean that was --  
16 we've been here since the beginning, literally since day  
17 one.

18 But this 1284 and this 242 I think represent a  
19 really exciting new time for PACE and we are pleased that  
20 the Department of Business Oversight has been given this  
21 responsibility to oversee the PACE industry.

22 Standardizing and improving consumer protections  
23 and what is a relatively new and growing industry are, we  
24 think, essential to its growth and to ensuring the continued  
25 growth of the significant environmental, national natural

1 disaster resiliency and economic benefits that PACE was  
2 created to deal with. We also think it is equally essential  
3 that the public policy goals of PACE during this transition  
4 period be focused upon so that we establish new regulations  
5 that would allow those public policy goals to continue to be  
6 achieved.

7           We're going to have written comments and, as Mike  
8 did before, I'll just have a couple of issues to highlight  
9 here. And, similarly, you know, we think clarification  
10 around the issue of ability to pay is an important issue for  
11 the Department to take on soon. You know, in particular the  
12 issue of residual income. You know, the cost of living  
13 varies pretty dramatically throughout the State of  
14 California and we think it's important the Department weigh  
15 in on this soon and also provides a clear timeline so that  
16 all PACE administrators have the same understanding of the  
17 regulations and the law, and understand it in the same way,  
18 and can implement it on the same day. So that the market is  
19 standardized.

20           Second, you don't address it in the document you  
21 sent out last night, but we think that the PACE registry is  
22 also a really important top priority item. We have been  
23 working with the other PACE, the two other major PACE  
24 providers and although the statute calls for the Commissioner  
25 to make a rule on this by January 1, of 2020, we think that



1 can be achieved much sooner and we would urge her to do so.

2 We are very focused on it and think it's an  
3 important, not only consumer protection, but an industry  
4 standard that needs to be reached.

5 And third, the statute is written in such a way  
6 that it appears that the training should be done by each  
7 individual PACE administrator. And we wanted to get  
8 clarification from the Department that rather than doing  
9 that, that we may contract with an outsider entity that  
10 would train for the entire industry. We think it would be  
11 burdensome for contractors, if they want to shift from one  
12 PACE administrator to another, to have to essentially get  
13 the same training over and over again. And so, we would  
14 like clarification that we could in fact contract with one  
15 entity that will also have the same level of training for  
16 everybody. You don't get one kind of training from one  
17 administrator and a different one from a different one.

18 So, those are highlights. We're going to have  
19 additional written comments, but really look forward to  
20 continuing to work with you all.

21 MS. OWEN: So, I'd like to comment on the training  
22 aspect. You forget that sometimes when you do a new  
23 regulatory scheme you all of a sudden -- new cottage  
24 industries pop up. And I heard from two interested entities  
25 that want to be blessed by the Department as PACE

1 administrator trainer or PACE trainer.

2           The Department regulatory scheme will never  
3 endorse a trainer, so we would look -- that's, candidly, the  
4 company's duty, right. Are these guys doing that type of  
5 training that you had to have to comply with the law?

6           So, I love the idea of cottage industries. I love  
7 the idea of small businesses, but don't call me and ask for  
8 me to endorse you because it is not going to happen. So,  
9 that and the duty truly is on you as the company to make the  
10 right business decision that's best for you to have you  
11 comply with the law and protect the people that use your  
12 product.

13           MR. STATON: Makes sense.

14           MS. OWEN: Makes sense? That's what I would like,  
15 sensible regulations.

16           Thanks, Cliff. Sorry, I didn't mean to tease you.

17           MS. MCBRIDE: Good morning everyone, my name is  
18 Demetra McBride. I am here representing the County of Los  
19 Angeles. As you know, we oversee a very large region and we  
20 are currently in the process of expanding our number of  
21 operational PAs within our territory.

22           I, too, am not going to make definitive comments.  
23 I think that the density and the complexity of the law  
24 really calls for us to be clear and concise and  
25 comprehensive. And, also, as you can imagine, I have a

1 number of internal stakeholders, not the least of which we  
2 partner with our Treasury and Tax Collector's Office on this  
3 program.

4 I will point out and it's good to see that this  
5 early in the morning we are kind of being consistent. I  
6 will point to a couple of key areas. They are not  
7 exhaustive. But we, too, really support the importance of  
8 the real-time registry. This is essential. I would love, I  
9 know that the law is written in a particular way, but I  
10 would love to see if there is a way we can incentivize the  
11 program administrators to accelerate the training. I think  
12 that three-month gap can be dispositive between the  
13 licensing and the training date. And we would love to see  
14 some standardization and uniformity, and certain criteria  
15 and standards that are embedded within the law. For example  
16 useful life.

17 We have key references that are established within  
18 the State under the CPUC and the CEC and others, and we  
19 would hate to enter into a market that now is regulated but  
20 where we allowed for there to be potentially forum shopping  
21 or PA shopping within a single jurisdiction. It adds  
22 confusion in the marketplace and, obviously, we want to  
23 avoid that.

24 And last, I would love for us to really look at  
25 the regulatory authority or the oversight on these

1 solicitors and the solicitor agents. They are the people  
2 that are out in the field having the direct contact with  
3 consumers and they're our proxy. So, whatever  
4 miscommunication or omission there really cascades down  
5 throughout the stream.

6 Thank you very much. We look forward to working  
7 with you and thank you very much for undertaking this very  
8 important duty.

9 MS. OWEN: Thank you.

10 Sir, you're safe.

11 (Off-mic comment)

12 MS. OWEN: Please, come on up. How did that  
13 happen, young lady? Yelling, yelling too much, right. Ah,  
14 ah, ah. Don't start me.

15 Good morning.

16 MS. SPERLING: Hi, good morning. My name is  
17 Jennifer Sperling. I am here representing Bet Tzedek Legal  
18 Services. We are a non-profit legal organization based in  
19 Los Angeles that serves over twenty thousand clients every  
20 year, including low-income and elderly homeowners. We have  
21 many clients whose homes have been put at risk by  
22 unaffordable PACE liens.

23 And I would like to use my short time here today  
24 to highlight a few places where we believe rulemaking is  
25 needed to close potential loopholes in AB 1284 and

1 strengthen protections for our vulnerable clients. And I am  
2 going to be a little more specific in my comments than some  
3 other people have been before me, although, I am encouraged  
4 about what I have been hearing so far about a new era in  
5 PACE.

6           So, the story of one of our clients, who I would  
7 call "Robert", is illustrative for this purpose although  
8 these issues are not unique to Robert. They are systemic  
9 issues that DBO is now in a position to impact. Robert is a  
10 senior and retiree. He lives on a total monthly income of  
11 about twenty five hundred dollars. He has medical  
12 challenges that require ongoing care and monitoring. Robert  
13 unknowingly ended up with multiple funded assessments from  
14 multiple PACE administrators all within a short-period of  
15 time.

16           The total amount financed was over one hundred  
17 thousand dollars. Robert's taxes are impounded by his  
18 lender and when they ran his next escrow analysis there was  
19 a shortage of thousands of dollars. His mortgage jumped  
20 from nine hundred dollars a month to over three thousand,  
21 exceeding his total monthly income. We met him when he was  
22 already facing foreclosure.

23           Looking at 1284 with Robert in mind, we urge DBO  
24 to clarify the mechanism by which section 22678(g) will  
25 work. If administrators are going to finance first and then

1 run numbers later, they should be required to deliver any  
2 difference immediately, within days, to prevent collateral  
3 consequences like foreclosure by third party lenders. There  
4 should also be a process for homeowners to appeal if there's  
5 an allegation that the intentional misrepresentation  
6 exception applies.

7           The real-time database contemplated by 22693 could  
8 help avoid the problem of multiple assessments, but only if  
9 "real-time" is defined as the date the assessment is funded.  
10 If "real-time" is the date when the assessment is recorded,  
11 which could be months after funding, this provision will  
12 fail to prevent situations like Robert's. In verifying  
13 expenses under 22687, DBO should make rules that reflect the  
14 realities of homeowners living on fixed incomes and take  
15 into account medical or caregiver expenses, which are  
16 housing expenses because they allow disabled and elderly  
17 people to keep living in their homes, but they do not always  
18 show up as debt.

19           We also believe housing expenses should consider  
20 whether the homeowner has a third party lender who will be  
21 adding a statutory escrow cushion to their tax impound.

22           Lastly, for my comments today --

23           MS. OWEN: Could you say that again, please?

24           MS. SPERLING: Sure. So, lenders by statute have  
25 to make you -- if you impound your taxes --

1 MS. OWEN: Right. Right, right.

2 MS. SPERLING: You have to have a cushion of two  
3 months' worth of escrow.

4 MS. OWEN: Right.

5 MS. SPERLING: And so, if you end up with an  
6 escrow shortage, in order to make that up not only will they  
7 add the shortage but they will add the two months on top of  
8 that. So, it's an even larger gap that the homeowner has to  
9 make up if they fall behind.

10 MS. OWEN: Right.

11 MS. SPERLING: And currently housing expenses  
12 don't -- the way it's defined they don't consider what will  
13 happen if your tax increases --

14 MS. OWEN: If they fall behind.

15 MS. SPERLING: -- and you end up with an escrow  
16 shortage.

17 MS. OWEN: Within the impound account?

18 MS. SPERLING: Correct.

19 MS. OWEN: Got it. Okay. No, that makes sense.

20 MS. SPERLING: Lastly, for my comments today,  
21 there will be more and we appreciate the opportunity to  
22 continue to dialogue with you on this, we ask that DBO  
23 clarify section 22687(e), the emergency exception. We're  
24 concerned that a "system whose primary function is  
25 temperature regulation" might end up expanding to products

1 beyond the heating and cooling systems this narrow exception  
2 was designed for.

3           So, thank you for your attention today, and we  
4 look forward to working with you on these very important  
5 consumer protections and regulations.

6           MS. OWEN: How are you? Are you another one with  
7 a larynx problem?

8           (Laughter)

9           MR. MEGANATHAN: No.

10          MS. OWEN: The long and short of it is no. Nice  
11 to see you, sir.

12          MR. MEGANATHAN: Good morning, Commissioner.

13          MS. OWEN: How are you?

14          MR. MEGANATHAN: Jith Meganathan. I'm speaking on  
15 behalf of the California Low Income Consumer Coalition, a  
16 statewide group of nonprofits that assist indigent clients  
17 facing financial and legal hardships stemming from largely  
18 consumer abuses.

19                 We were actively engaged in negotiating the  
20 provisions of last year's SB 242 and AB 1284. Our primary  
21 goal in the rulemaking process is to ensure that low-income  
22 Californians do not face financial peril, including the risk  
23 of losing their homes or their hard-earned equity as a  
24 result of entering into PACE financing.

25                 In order to achieve this goal, the topics on which



1 we believe rulemaking is both warranted and necessary are as  
2 follows: first, clarifying the ability to repay  
3 determination. This is the most important topic for  
4 rulemaking and it is imperative that it be done in a way  
5 that protects homeowners going forwards rather than  
6 facilitating more predatory PACE financing of the kind that  
7 Ms. Sperling spoke about.

8           The second is ensuring that PACE administrators  
9 are regulated in their roles as issuers or facilitators of  
10 non-PACE financing.

11           The third is clarifying the definition of a "PACE  
12 solicitor".

13           The fourth is setting forth the content of  
14 required annual reporting.

15           The fifth is clarifying required financial  
16 disclosures to homeowners as part of the financing process.

17           The sixth is ensuring that the permitted term for  
18 repayment of PACE financing does not exceed the expected  
19 life of the financed home improvements.

20           The seventh is clarifying the timelines for PACE  
21 administrators to respond to any findings by the  
22 Commissioner of rules violations.

23           The eighth is ensuring meaningful penalties for  
24 rules violations.

25           And the ninth is ensuring the existence of a

1 robust public, and I want to emphasize that word "public",  
2 database of PACE-related information.

3 We look forward to working with the Department and  
4 the various stakeholders in order to ensure that the  
5 forthcoming regulations adequately address these concerns  
6 and thank you very much for your time.

7 MS. OWEN: Repeat number two again for me, please?

8 MR. MEGANATHAN: Yes. Ensuring that PACE  
9 administrators are regulated in their roles as issuers or  
10 facilitators of non-PACE financing. I don't know if you're  
11 aware of this, but there are unsecured financing products  
12 that are offered by PACE administrators in conjunction with  
13 PACE financing.

14 MS. OWEN: So, outside of a PACE --

15 MR. MEGANATHAN: Yes.

16 MS. OWEN: -- PACE transaction? Got it, okay.

17 MR. MEGANATHAN: Thank you.

18 MS. OWEN: Nice to see you. Nada? Come on  
19 financial services. Kevin. Please.

20 MR. GILES: Madam Commissioner and staff, I'm Bob  
21 Giles. I'm the CEO of PACE Funding Group.

22 We're very excited that you're now involved and  
23 the industry is finally being regulated. It's been badly  
24 needed. We are one of the smaller programs, with 200 cities  
25 and counties throughout the State. But smaller largely

1 because of our conservative underwriting standards.

2           So, I'm just going to make three points. One is  
3 we really look forward to seeing the details of the  
4 regulation, particularly with respect to underwriting  
5 standards. And we really urge for a lot of detailed  
6 standardization so that everybody's operating from the same  
7 playbook.

8           Secondly, with respect to training we agree with  
9 Cliff in being able to outsource that, contract it out to a  
10 capable party. I think that would be very useful for the  
11 entire industry, for all the PACE programs.

12           And then, you know, thirdly, we're very interested  
13 in seeing what the licenses will look like. And if you  
14 could speak to that, that will be terrific. Looking at the  
15 licensing for the PACE programs, which will be due at the  
16 end of -- in January 2019 I guess we're all supposed to be  
17 licensed.

18           MS. OWEN: Right.

19           MR. GILES: Right. And what does that license,  
20 you know, look like?

21           MS. OWEN: The physical look of the license?

22           MR. GILES: Yeah, does it mean it resemble a --

23           MS. OWEN: An 8-by-10 piece of paper with a seal  
24 on it, with my signature.

25           MR. GILES: Okay, terrific.

1 MS. OWEN: At least at that point it's my  
2 signature.

3 MR. GILES: So, you're not pulling from the  
4 mortgage or the real estate industry with respect to their  
5 licenses?

6 MS. OWEN: No, they have the same type of  
7 document.

8 MR. GILES: Okay.

9 MS. OWEN: I think. Am I missing something?

10 MR. GILES: No. You know, this is all new to us,  
11 so we're looking for some clarification.

12 MS. OWEN: Okay. All right.

13 MR. GILES: Okay, so --

14 MS. OWEN: No, no, no, but we would -- I mean  
15 we're working towards a database so that also -- so, for  
16 mortgage on MLOs you would look to -- we would hope you  
17 would be on a database where people could say, okay, whose,  
18 you know, PACE Financing Group are you going to do the --

19 MR. GILES: Okay.

20 (Off-record comment)

21 MS. OWEN: Right, a piece of paper. Yeah.

22 MR. GILES: Okay. Well, that all sounds great.

23 MS. OWEN: We don't have any more gold, to give  
24 you a little gold like your --

25 (Laughter)

1 MR. GILES: Well, thanks. Thanks for the  
2 clarification. Look forward to working with you.

3 MS. OWEN: Oh, thank you. It's a piece of paper.  
4 It's documented. You would be on our website as one of  
5 them, so that's also an indication of the licensee. We're  
6 hoping for the database to be able to use it, so anybody  
7 could find out who you are.

8 MR. GILES: Okay, terrific.

9 MS. OWEN: We believe that other states are going  
10 to start doing this.

11 MR. GILES: That we will welcome. Thank you.

12 MS. OWEN: Thank you.

13 Please, your turn. You're up.

14 MR. DAILEY: Good morning. My name is Casey  
15 Dailey. I am here representing the Western Riverside  
16 Council of Governments.

17 MS. OWEN: Are you a JPA?

18 MR. DAILEY: Yes, we are a JPA.

19 MS. OWEN: Thank you.

20 MR. DAILEY: We launched our PACE Program in 2012.  
21 And as of today we currently have five residential  
22 providers, most of all who are in the room here, that  
23 operate our program within our sub-region. We also operate  
24 or we oversee the administration of the California HERO  
25 Program statewide. To date we've --

1 MS. OWEN: Say that, again?

2 MR. DAILEY: We also oversee the administration of  
3 the California HERO Program statewide.

4 MS. OWEN: Statewide you do oversee it.

5 MR. DAILEY: Yes, ma'am.

6 MS. OWEN: Okay, thank you.

7 MR. DAILEY: To date we've been involved in over  
8 77,000 projects and we have over 370 jurisdictions that we  
9 are responsible for.

10 MS. OWEN: How come you don't have any gray hair?

11 MR. DAILEY: I do.

12 (Laughter)

13 MS. OWEN: Nicely done. You would have thought  
14 you and I planned that. Nicely done.

15 MR. DAILEY: It's slowly spreading, trust me.  
16 Hopefully, to avoid the spread we are very supportive of  
17 what DBO is doing here with 1284. We're very encouraged by  
18 kind of the leveling of the playing field, standardizing the  
19 program across all platforms.

20 I'm very interested in, obviously, the ability to  
21 pay and a lot of what other people have talked about here.  
22 And I think that creating the uniformity around useful lives  
23 around products, not having those tied to the financing  
24 terms, and really, you know, creating a program that can be  
25 a long-term, viable, and sustainable program moving forward

1 is what we're most interested in. And we are here to help  
2 and support in any way possible.

3 So, I'm going to keep my comments brief. But we  
4 will be submitting fairly extensive written comments with  
5 some of our background and experience. So, thank you very  
6 much.

7 MS. OWEN: Thank you.

8 You're with him? Please.

9 MR. LEVAITCH: Good morning Commissioner and  
10 Staff, Joe Levaitch on behalf of Spruce Finance. Spruce is  
11 currently serving nearly 200 cities under the CSCDA Open  
12 Pace, as well as WRCOGs PACE Programs.

13 Spruce is currently a licensee under DBO for their  
14 work in the unsecured clean energy finance space, serving  
15 nearly 70,000 homeowners throughout California.

16 MS. OWEN: And so, you have a CFO license?

17 MR. LEVAITCH: Yes. Bruce was also the first in  
18 the industry to implement mandatory callbacks for all  
19 customers. So, we're encouraged by the standardization  
20 around consumer protections for PACE.

21 We're looking for clarifications around ability to  
22 repay and what exactly that will look like. But we look  
23 forward to continued work with DBO.

24 And that is it at this time. So, we thank you for  
25 your comment and time. Thanks.

1 MS. OWEN: Did I miss that row? Oh, the whole  
2 family. Got it. Got it.

3 (Laughter)

4 MR. MATUSIAK: Good morning Commissioner Owen and  
5 members of the Department of Business Oversight. My name is  
6 Ari Matusiak, Chief Strategy Officer at Renovate America.

7 Thank you all so much for your leadership and for  
8 the opportunity. I will keep my comments brief. And I'm  
9 heartened by the consistency that is in the room in terms of  
10 the issues that are being raised. I think it speaks to both  
11 the rigor of the process that you all went through in the  
12 shaping of the legislation, as well as the opportunity  
13 before us from a policymaking perspective.

14 MS. OWEN: We still haven't gotten enough sleep.

15 MR. MATUSIAK: Yeah, the same. As you all know,  
16 Renovate America was very supportive of both SB 241 and AB  
17 1284. We see these as critical advancements in the overall  
18 effort to set a standard for how PACE should be understood  
19 as both a policy and an industry. And that accomplishing,  
20 achieving this in California will not only benefit  
21 California homeowners and California communities, but the  
22 rest of the country as well.

23 I would just call out four items that I think are  
24 perhaps deserving of public note. And we will certainly  
25 follow up with our own comments by January 5th. Many of



1 them have been already referenced, but just to underline a  
2 couple, the first being the real-time registry. So, we,  
3 too, think that this is a time-sensitive item. We also  
4 think it's a little bit of a low-hanging fruit item. It is  
5 not necessarily without technical issues to consider and  
6 work through, but it is something that once in place in  
7 California will go a long way to insuring that there is  
8 consistency in the industry, and visibility and transparency  
9 for all parties into the assessments that are being  
10 originated and where they are being originated.

11           Second, just a comment on implementation. As has  
12 been referenced by other folks who have come up here, SB 242  
13 and AB 1284 have effective dates that begin January 1, of  
14 2018. AB 1284, as you know, really has three effective  
15 dates of January 1, April 1, and then January 1, of 2019.

16           While those are rolling forward and we understand  
17 them to be effective when they are effective, it also has  
18 created, I believe, a little bit of market confusion and  
19 noise. To that end, Renovate America, Ygrene, and Renew  
20 Financial wrote a letter to all of our contractor partners,  
21 outlining that we will be complying and expect full  
22 compliance with SB 242 and AB 1284.

23           I would ask that the DBO consider perhaps  
24 emphasizing that point to all parties. That even though  
25 licensure happens on January 1, of 2019, that the

1 expectation is that folks are going to be following the law  
2 starting on January 1, of 2018.

3           The third item relates to underwriting. And  
4 again, other folks have raised the importance of defining  
5 the particularities of AB 1284 underwriting requirements,  
6 specifically with respect to the ability to pay. There are  
7 a number of technical definitional issues that I know you  
8 all are aware of and we will all be benefitted by your  
9 offering clarity on those issues as we go to market with our  
10 compliant product.

11           And then the fourth, which has not been  
12 referenced, yet, is with respect to the relationship between  
13 the DBO and the CSLB and the licensure requirements for the  
14 PACE contractors, the PACE solicitors and the solicitor  
15 agents. CSLB really is a fundamental part of the success of  
16 the AB 1284 regulatory regime and operational framework, and  
17 we hope to see their active participation in thinking  
18 through some of the market dynamics, and regulatory dynamics  
19 that are going to be critical in order to ensure that we can  
20 all meet the requirements of the law.

21           And with that, you'll see our comments in writing,  
22 and we appreciate very much the time and opportunity to be  
23 before you today. Thank you.

24           MS. OWEN: Sir? Sir? You guys are making it too  
25 easy. Mr. Burkett? Nada? You're the one who's been here

1 before.

2 (Laughter)

3 MS. OWEN: Ma'am?

4 (Off-mic comment)

5 MS. OWEN: Oh, okay, to be the last one? Okay.

6 All right, that's fine.

7 Good morning, young lady.

8 MS. LANG: Hi, good morning. Karen Lang. I'm  
9 actually here to speak on behalf of Joe Kelly, from Los  
10 Angeles, who is on the phone but, unfortunately, can't dial  
11 in. And now, I've lost the email that he sent me. So, he  
12 says he's waving to you.

13 MS. OWEN: Tell him, hi, Joe.

14 MS. LANG: She says, hello, Joe.

15 "Good morning Commissioner Owen, staff and  
16 participants. This is Joe Kelly, Treasurer and Tax  
17 Collector for the County of Los Angeles. I join this  
18 morning with several county tax collectors in providing  
19 comment.

20 Related to the advertising standards, we recommend  
21 that the Department of Business Oversight develop a standard  
22 brochure which solicitors and contractors should provide to  
23 all PACE applicants. They should include disclosures on,  
24 among other things, one; the dollar impact of a typical PACE  
25 loan on the property owner's annual secured property tax

1 bill. A \$25,000 loan at 6 percent for 20 years, et cetera.  
2 The eligibility criteria to qualify for a PACE loan. The  
3 fact that PACE is not a "free government program." We  
4 encourage you to prohibit terms like public/private  
5 partnership, and government-baked, which suggests to the  
6 consumer a strong government role.

7 Prohibit statements or suggestions of tax  
8 advantages of a PACE loan. Require the disclosure of the  
9 IRS position that payments on a PACE loan on not deductible  
10 real estate taxes. However, the interest portion of your  
11 payment may be deductible as home mortgage interest.

12 Consumer compliant options available to the  
13 property owner.

14 DBO should post this brochure on its website and  
15 solicitors and contractors should be required to provide a  
16 hyperlink to it in all of their marketing materials, and as  
17 part of the application itself.

18 Similar to how many have viewed the Ten  
19 Commandments, we view this brochure as a sacrosanct guiding  
20 set of disclosures which will help to ensure the California  
21 PACE consumer is, above all else, an informed PACE consumer.

22 And related to the complaint processes and  
23 procedures, each PACE administrator needs to have complaint  
24 protocols and processes in place. Consumers should be able  
25 to file via telephone, web, or in writing. Consumers should

1 be able to file complaints in languages other than English.  
2 And for the deaf and hard-of-hearing consumers there should  
3 be video relay capability.

4 DBO should require each PACE administrator post  
5 complaint statistics on the DBO website each month, with  
6 easy sort available by PACE administrator and contractors  
7 within that administrator.

8 We also recommend the DBO establish a PACE  
9 consumer hotline, funded by PACE administrators, but  
10 overseen by the DBO for matters that aren't resolved by  
11 administrators and for other referral purposes.

12 And finally, contractors that develop a documented  
13 pattern of complaints should be disallowed from all PACE  
14 programs, not just the one in which they have a current  
15 relationship."

16 MS. OWEN: Karen? Is Joe going to also put these  
17 in writing and comment?

18 MS. LANG: Yes.

19 MS. OWEN: Okay, that's all I wanted to know.

20 MS. LANG: I have one paragraph left.

21 MS. OWEN: No, it's cool. No, no, no, I just  
22 wanted to make sure because if he wasn't, I wanted to ask  
23 him to do it.

24 MS. LANG: Yes, he will do that.

25 MS. OWEN: Okay, great. Thank you.

1 MS. LANG: "Lastly, Commissioner Owen, I encourage  
2 the Department to consider not allowing PACE loans to remain  
3 with the property, if the property owner refinances property  
4 debt. Earlier this year, Los Angeles County announced a  
5 policy stance that the County would not enter into limited  
6 subordination agreements to allow that to occur. In Los  
7 Angeles County, PACE gets paid off before the property owner  
8 gets to put extra cash into his or her pocket.

9 And the California Association of County  
10 Treasurers and Tax Collectors looks forward to the continued  
11 dialogue in this rulemaking process. Thank you."

12 MS. OWEN: Thank you.

13 MR. SLAYDEN: Good morning, my name is Hugh  
14 Slayden. I'm with the Senate Insurance Banking and  
15 Financial Institutions Committee.

16 I'm really only here to kind of confirm something  
17 that I understood earlier. As I get it, you were going to  
18 be doing one package of regulations that you intend on doing  
19 the formal notice on July 1st. So, implicitly that means  
20 you will not be doing any sort of emergency regulation or  
21 anything to address those provisions of the bill that go in  
22 prior to January 2019. So, I just wanted to confirm that  
23 that's correct, there's no separate, it's all one package?  
24 Thank you very much.

25 MS. OWEN: Final, please. Final row. Oh, you

1 don't. Please.

2 Thank you Commissioner and staff for inviting us to  
3 participate in this. I'm David Gabrielson. I'm the  
4 Executive Director of PACENation.

5 We are a national 501(c)(3), largely foundation  
6 funded, nonprofit advocate for PACE, both commercial PACE  
7 and residential PACE. Our stakeholders include state and  
8 local governments, similarly mission-minded nonprofits, and  
9 a growing number of private sector participants in the PACE  
10 marketplace.

11 We applaud California's passage of 1284, 242, and  
12 1093. We think these are extremely positive steps for the  
13 PACE marketplace, as is the Department of Business  
14 Oversight's oversight of PACE programs. We're advocates for  
15 regulation. We think it's appropriate at the state level  
16 and states that want to take it on.

18 We will provide written comment and appreciate  
19 your invitation to do so.

20 PACE is a very powerful tool to help local  
21 governments, and homeowners, and members of the business  
22 community achieve shared objectives. This legislation is  
23 designed to address some of the flaws that others have  
24 spoken to. Particularly, the ability to pay requirements of  
25 1284 and the registry, which we think is a very important

1 tool to make sure that homeowners don't receive multiple  
2 assessments.

3           We're particularly interested in education and  
4 testing. And I don't think we seek your exclusive blessing.  
5 We will, because this is what we do, work with our  
6 stakeholders and that includes local governments and PACE  
7 providers, to develop an education and testing program that  
8 is effective and that I think ensures that all contractors  
9 or solicitor agents receive a very high quality standard of  
10 education that is consistent. We think that's beneficial to  
11 them, and to PACE providers, and to consumers.

12           And I guess we would look to -- as we, hopefully,  
13 work with you going forward, we would look to you to  
14 acknowledge with individual providers that -- providers?  
15 Program administrators. My terminology on the law has -- to  
16 ensure that the education and testing program that they  
17 present to you for approval meets your approval. It would  
18 be as simple as that.

19           So again, I thank you very much for holding this  
20 session today and we look forward to working with you going  
21 forward.

22           MS. OWEN: One of many.

23           MR. SLAYDEN: Thanks.

24           MS. OWEN: Thank you.

25           MR. SLAYDEN: Yeah.



1 MS. OWEN: I couldn't figure out any other way to  
2 do this, so I know it seems a little disjointed but --

3 MR. EBERLE: Good morning, Madam Commission. My  
4 name is Richard Eberle. I represent the Legislative  
5 Analysis Committee for the California State Auditor-  
6 Controller's Association.

7 We have a unique interest in the PACE legislation  
8 as well because regardless of who is doing any of the  
9 action, all of the PACE assessments will come through the  
10 Auditor-Controller's Office before they get placed on the  
11 tax bill.

12 And there's a couple of concerns that we have,  
13 initially. Typically, when we put direct assessments, which  
14 are special assessments on the tax bill, or on the tax roll,  
15 there typically is some sort of validation from the agency  
16 that's authorizing the assessment to be put on the bill.

17 And one of our concerns we have is that how is --  
18 as the auditor/controller, we're concerned about validation  
19 to make sure things are accurate and that they comply with  
20 the proper regulations.

21 And we appreciate the opportunity to be a part of  
22 the process so that we can understand how we best can  
23 validate that each assessment has been -- it conforms with  
24 the proper standards as set up by the Department of Business  
25 Oversight.

1           Every assessment that goes on the tax roll is  
2 validated to make sure that the approving body, such as in  
3 this situation it would be the program administrator, but  
4 that they've approved it. That the person, the people that  
5 are allowing it to be put on the tax roll have voted or made  
6 a decision, a conscious decision to allow that assessment on  
7 their tax bill.

8           And so, we're concerned of what we can do or how  
9 we can make sure that these assessments are legitimate for  
10 each individual taxpayer.

11           MS. OWEN: Because it hasn't happened in the past?

12           MR. EBERLE: The PACE assessments behave  
13 differently than every other assessment we've put on the  
14 roll before. Typically, it's not like a fire district just  
15 placing a fire assessment or a service fee on the --

16           MS. OWEN: And it's not Mello-Roos.

17           MR. EBERLE: That's correct it's not Mello-Roos.  
18 But the voters have made a conscious decision. The property  
19 owners have made a conscious decision through some  
20 mechanism. And typically, in the past, it's been a group  
21 type decision. Everybody in the specific geographic area  
22 has voted, yes, we agree to have this assessment placed on  
23 our tax bill.

24           MS. OWEN: Through a city or a county? I mean, I  
25 get where you're trying to.

1 MR. EBERLE: Yeah, that's correct. That's correct  
2 through a city or a county or --

3 MS. OWEN: So, the city or the county  
4 representatives say, yes, we would like to offer to our  
5 property owners PACE products.

6 MR. EBERLE: Well, no, but aside from PACE  
7 products, these types of assessments, as far as I can  
8 understand, have never been collected on a tax bill before.  
9 And so, they don't behave like any other animal that we've  
10 addressed putting it on a tax bill.

11 And so, our main concern is how do we validate  
12 that the individual property owner has validated, has  
13 approved that these assessments can go on their tax bill?  
14 What mechanism do we have as auditor-controllers to make  
15 sure that all the I's are crossed -- you know, the T's are  
16 crossed and I's are dotted.

17 MS. OWEN: I got it. I do it all of the time.

18 MR. EBERLE: I know. It's horrible.

19 MS. OWEN: It is.

20 MR. EBERLE: I've lost my hair over this process.

21 (Laughter)

22 MS. OWEN: So, we don't make cracks about gray,  
23 right.

24 MR. EBERLE: Well, it's gray. That's probably the  
25 reason why I shaved it off.

1           No, but -- and so, that's our main concern. How  
2 do we validate that this process, the integrity of the  
3 process and the legitimacy of these assessments? We do this  
4 for every other assessment that goes on the roll and we're  
5 concerned about that.

6           So, we look forward to working with the Department  
7 of Business Oversight.

8           MS. OWEN: And you're going to write a comment  
9 letter to the invitation to comment?

10          MR. EBERLE: Yes, absolutely.

11          MS. OWEN: Great.

12          MR. EBERLE: We also -- one of the concerns, and  
13 I'm not sure if this is part of this function, but SB 242  
14 addressed -- there was some comments made about forbearance.  
15 And we hope that the Auditors/Controllers Association can be  
16 involved in the conversations about that. Because when we  
17 place these on the tax roll it's typically once a year. And  
18 any adjustments to that affect many different processes that  
19 increase a significant workload for the tax collectors and  
20 the auditor-controllers to make adjustments to the tax bill.  
21 Any adjustments to the tax bill have a significant  
22 possibility and the likelihood to confuse taxpayers.

23                 Just on a regular roll correction, or any changes  
24 to the bills we do now, taxpayers are almost always  
25 confused. And as much as the program administrator provided

1 information and open lines of communication, the Auditor-  
2 Controller's Office and the Treasurer-Tax Collector's Office  
3 are the ones that get the phone calls to deal with the  
4 issues. And so, the taxpayers don't want to hear, hey, you  
5 need to go call this entity. That makes them even more  
6 upset than they already are.

7           And so, again, we look forward to being part of  
8 the process. We also look forward to making sure there's  
9 some standardization and consistency of how these get placed  
10 on the tax roll and how these get removed from the tax roll.  
11 So, thank you very much.

12           MS. OWEN: So, where are you located? Are you  
13 here in town?

14           MR. EBERLE: I represent, I'm the Auditor-  
15 Controller for Yuba County.

16           MS. OWEN: Yuba?

17           MR. EBERLE: Yes.

18           MS. OWEN: Great. So, if we needed you to come  
19 down and talk to us, it's a little easier than getting you  
20 out of --

21           MR. EBERLE: Say, Inyo County or something like  
22 that, I guess.

23           MS. OWEN: Inyo County, right.

24           MR. EBERLE: Thank you.

25           MS. OWEN: Thank you.

1 MS. SITKIN: Good morning. Thank you very much  
2 Commissioner and staff for hearing all of us. I am Lisa  
3 Sitkin, here from National Housing Law Project. We are a  
4 resource center for legal aid and other advocates, with a  
5 mission to help preserve access and preservation of housing  
6 for low-income tenants and homeowners.

7 I wanted to just bring to the conversation  
8 something that's been alluded to in some of the earlier  
9 comments, which is a bit of a national perspective.  
10 Colleagues of mine around the country, at other consumer  
11 advocacy groups, and legal aids elsewhere are very  
12 concerned, as I am, that the PACE regulations that  
13 California adopts are going to be seen as a model for other  
14 states. I think, Commissioner, you actually alluded to this  
15 as well, about the registry. And in Washington. And this  
16 is going to be looked to by many people, many regulators and  
17 many government agencies.

18 And that makes it all the more important, not just  
19 for Californians, but on a sort of national level that we  
20 get it right.

21 In my view, we really still have not solved or  
22 even addressed, in some cases, some of the serious problems  
23 with the PACE financing model as it affects consumers. And  
24 I just want to ask that we not permit the need for speed,  
25 which I recognize because of the window and the timing of

1 the effective dates, but that we not allow that to outpace  
2 the need for robust, thorough, clear and transparent  
3 protections that protect homeowners like Robert, and others  
4 who we're starting to see in more numbers in Northern  
5 California. It had been really concentrated, the problems I  
6 was hearing about, in Southern California. But it's  
7 definitely, you know, making its way around the State,  
8 understandably, and the concerns are growing with that.

9           That said we will be submitting comments. I  
10 wanted to just touch on a few of the areas, non-exclusive,  
11 that we'll be speaking to.

12           I know that you've said that the issue of the  
13 legislation itself is out of bounds here, but I will just  
14 put on the record that we are still very interested in  
15 seeing through the 1284 authors' commitment to engage in and  
16 commit to amendments that would clean up and clarify some of  
17 the issues in the existing legislation. And I would ask  
18 that the Department, as it did with the original  
19 legislation, be involved in providing technical assistance  
20 for that process, as well.

21           A couple of the areas I just wanted to touch on  
22 are annual reporting. We will definitely be providing our  
23 list of what we think is essential to go into that. And I  
24 think one of the points I want to make is that in tracking  
25 performance, or tracking problems, I think it's really

1 important that we keep in mind that we have to look beyond  
2 tax defaults. Property tax defaults are sort of often used  
3 as a proxy for whether these went south or not. But there  
4 are many ways in which the problems can be masked and not  
5 show up as a property tax default.

6           For example, if the person has a mortgage and it's  
7 an escrowed property tax, the servicer's going to be  
8 advancing those dollars and then they're going to show up on  
9 the mortgage bill as part of the escrow impound. And that  
10 might be invisible if that's not something that we dig into.

11           So, I think that that's a very important sort of  
12 area, the whole interaction with escrow accounts, both that  
13 existed before the PACE lien went into effect and that may  
14 follow when somebody may default on their taxes and have  
15 this servicer step up.

16           I also think it's very important to address the  
17 risk of stacking, both with respect to multiple PACE loans,  
18 and I'm really encouraged to hear that there is sort of  
19 momentum and interest in moving forward quickly on the real-  
20 time database. I do think it's important, as Ms. Sperling  
21 said, that that include unrecorded, but funded transactions  
22 so that we're not dealing with this sort of window of time  
23 where something drops off the radar.

24           But I also think it's important to look at ways in  
25 which rulemaking can be sure to address the issue of program



1 administrators who have contractors working, you know, sort  
2 of under their umbrella, who are also offering these other  
3 non-PACE products because that seems to be accelerating.  
4 And that's another sort of risk of stacking, a different  
5 kind of stacking that needs to be considered.

6           With respect to the underwriting, I just think  
7 that it's very important that we look at the income  
8 verification standards and setting some minimum  
9 documentation requirements to be sure that what's being  
10 looked at is current and prospective income, and not past  
11 income. If somebody got a lump sum last year on their  
12 taxes, or something that might skew what the actual income  
13 is.

14           Finally -- oh, no, not finally. Two more. The  
15 complaint process I think needs to be robust and  
16 transparent. And I think, you know, at the hearing on 1284  
17 there was a lot of conversation about the issue of  
18 confidentiality provisions. And I think those absolutely  
19 need to be addressed. And that every effort should be made  
20 to make the information about complaints, the tracking of  
21 complaints available to the public and to advocates as  
22 expeditiously as possible.

23           And then, finally, I think one of my main concerns  
24 here is that it's not clear to me how homeowners directly  
25 get relief, you know, from a lien that's recorded. That's

1 not what this statute does, as I read it. And, you know,  
2 there is the provision in 22687(g) for, you know, providing  
3 for the difference if there is a discrepancy between the  
4 financed amount and the ability to pay analysis. In my  
5 view, it comes too late, but you've all heard that.

6 And I think that there has to be a lot of work  
7 done to make sure that there is a real process that happens  
8 quickly. Because these are situations where the problem can  
9 snowball very, very quickly. And we want to make sure that  
10 if there's relief available, it comes as soon as possible.  
11 Thank you.

12 MS. OWEN: Thank you.

13 Ma'am? Sir?

14 MR. MIERZWA: Good morning, Commissioner. Dan  
15 Mierzwa, Yuba County Treasurer-Tax Collector. You heard  
16 from my colleague, the Auditor-Controller, Mr. Eberle, a few  
17 moments ago.

18 And I kind of wanted to see where we're going to  
19 go talking about from the public perspective. The Auditor  
20 kind of gave you a sense of what's happening at the counter  
21 to the actual customers or constituents, as I would say,  
22 from our providers that have spoken today.

23 And then, the last speaker talked about the  
24 reporting, talking about the default or the delinquencies.  
25 That was an issue that the tax collectors had a high degree

1 of concern on. So much so that we saw the *Wall Street*  
2 *Journal* had done a report several months ago.

3 One of the concerns I had was I fielded no more  
4 than four questions from various providers, myself, about  
5 the integrity of the data from the County of Yuba that was  
6 submitted. That's one of the areas where we want to make  
7 sure the standardization is the foundation for good fiscal  
8 policy for all of these local jurisdictions that are saying  
9 providers, please help us provide that.

10 But we need to know what that data is saying. And  
11 from that, we would like to see that delinquency, the  
12 default data, and the capitalized interest as a component  
13 that ultimately these constituents are going to pay. What  
14 burden are they going to bear to have the sufficiency of  
15 which they self-selected to have? That's something we want  
16 to facilitate.

17 But that annual reporting, if we can get that  
18 standardized across providers so we can use that, so we can  
19 see the trend lines. If we hit the next recession, what's  
20 going to happen.

21 And, Commissioner Owen, we talked about that  
22 before when you spoke you spoke to CACTECH (phonetic). And  
23 I appreciate that conversation because those calls come in  
24 directly to the person that's going to separate them from  
25 their money. So, we share that same mind with you. How do

1 we prevent that? How can we make good public policy from a  
2 local level all the way up to the State level, being able to  
3 sort that data whether it be into a jurisdiction by zip  
4 code, a particular address, or all the way into a county  
5 level, so those public policymakers can make that decision?

6 So, that was one of the areas that CACTECH really  
7 was excited about this DBO being involved and being able to  
8 provide. So, we're going to provide those comments. I  
9 think we provided them to you in writing, but to send those  
10 again.

11 MS. OWEN: I know, but make sure you do it from a  
12 regulatory stand point.

13 MR. MIERZWA: Absolutely.

14 MS. OWEN: Right. Again, remembering that those  
15 are all public, but our responses as well are all public.  
16 So, that's an important distinction. That's helpful.

17 MR. MIERZWA: So, again, thank you so much.

18 MS. OWEN: Thank you. You guys from Yuba County  
19 plan on coming down 99. I'm going to want to see you.

20 (Off-mic comment)

21 MS. OWEN: Please.

22 Good morning Commissioner Owen and members of the panel.

23 I'm Jenine Windeshausen, Placer County Treasurer-Tax

24 Collector. I've been the elected Treasurer-Tax Collector in

25 Placer County for 25 years. And for the last 10 years I

1 have been the Placer County PACE Program Administrator for  
2 the County and its six cities.

3 I'd like to speak to several areas that are under  
4 consideration today. With regard to applications,  
5 underwriting and disclosures, including the methodology for  
6 calculating APRs, I would urge that you consider consistency  
7 with real estate lending industry standards, such as  
8 Regulation Z and the Truth In Lending Act.

9 Underwriting should be verified and not based on  
10 sworn statements from property owners. I think that that  
11 can be a weak link in the underwriting practice.

12 Under deceptive practices, I urge you to consider  
13 rulemaking relating to the timing of when documents are  
14 executed, the timing of the rights to rescind, and the  
15 timing of when liens are recorded, and when the PACE  
16 assessment is added to the property tax bill.

17 These areas are really very esoteric, technical  
18 aspects of PACE funding and they are all areas that are ripe  
19 for abuse, and resulting in inflated costs for property  
20 owners.

21 Disclosures related -- should be made related to  
22 the APR. Again, hopefully, consistent with existing real  
23 estate standards and what consumers are accustomed to  
24 seeing.

25 Capitalized interest, which is a very foreign

1 concept to most consumers. When we hear, related to PACE,  
2 no payments for two years, alarm bells should be going off.  
3 Because for most consumers, when they hear no payments, they  
4 expect that there is no interest that accrues during that  
5 time period. But with PACE, the interest does accrue and  
6 it's added to the amount of the financing, which is stacking  
7 interest on interest, if you will.

8           And then, also, disclosures related to the timing  
9 and the amount of their payments.

10           The rulemaking related to limited subordination,  
11 which my colleague from Los Angeles County mentioned, should  
12 really be considered. There are penalty interest rates and  
13 property losses associated with how defaults are ultimately  
14 collected and that can actually transpire one of three  
15 different ways.

16           Under Assessment District law, here in California,  
17 of which PACE is subject to, the PACE lender can strip the  
18 assessment from the property tax roll and pursue accelerated  
19 judicial foreclosure. If it is left on the property tax  
20 roll, and they can do that immediately upon default -- which  
21 they can start that process immediately upon default. And  
22 default technically starts July 1 of the following fiscal  
23 year in which the delinquency occurred.

24           The other way is through a bank foreclosure  
25 because they have an impound account and they're not keeping

1 that impound account current.

2           And another way, ultimately, is if it is left on  
3 the property tax roll, the tax collector is compelled to  
4 sell the property ultimately at a tax-defaulted land sale,  
5 but not sooner than five years. We are barred from taking  
6 action prior to five years. We must take action by the  
7 seventh year. During that time, the assessment accrues  
8 penalties at the statutory rate of 18 percent, plus other  
9 penalties. And so, that can quickly become an untenable  
10 situation for a property owner.

11           We've heard some today about consideration related  
12 to low-income property owners. I'd like to also call  
13 attention to seniors. This is another area where we have  
14 seen problems and challenges. Again, because this can be  
15 very complicated financing and seniors sometimes don't  
16 always have the ability to comprehend all of the  
17 consequences.

18           And I feel compelled to respond to something that  
19 was said earlier. I want to make the point that there are  
20 really very few jurisdictions which have the resources and  
21 the expertise to provide any level of meaningful oversight,  
22 let alone supervision of PACE Programs. By and large, once  
23 they have the authorization, I have to say it's largely a  
24 carte blanche application of PACE. Thank you.

25           MS. OWEN: Thank you.

1           Anybody want to say anything else? Okay, anybody  
2 else on the team? No.

3           Final comments. So, the Department communicates  
4 through a monthly bulletin. You will find it on our  
5 website. And on that monthly bulletin we have lots of  
6 information. PACE will be added. I highly recommend that  
7 you add yourselves to the distribution of the monthly  
8 bulletin, number ne.

9           I struggle, also, with the comment, Lisa, with the  
10 regulatory schemes and doing it right. And I know, I'm  
11 speaking on this already across the country. You know,  
12 people are asking me to speak on it across the country.

13           I commit to you that we are -- we get our duties,  
14 we get our effective dates, but we're also going to get it  
15 right. And I would tell you that's why we have everyone  
16 here to listen to you, so that we all hear from you and make  
17 the commitment to you.

18           That being said, DBO's considered a strong, but  
19 fair regulator. There's lots of smiles, lots of teasing,  
20 but these are people that many of us have known each other  
21 for a long time. We've met you. Please don't consider  
22 smiles and teasing as a weak regulatory structure. We take  
23 what we do very seriously.

24           Some people, in some industries, will tell you  
25 that we take no prisoners.



1           And I will tell you my commitment to you all and  
2 to the Legislature is to be that strong regulator. And  
3 start listening to the gossip about having to come into a  
4 meeting with the DBO when we're not happy and consumers are  
5 not being taken care of fairly in California. It isn't  
6 pretty. And some of your legislative advocates can tell you  
7 stories. And you don't want to be Equifax right now, let me  
8 tell you.

9           (Laughter)

10           MS. OWEN: Getting to DBO and CSLB, we are working  
11 with them. We know they're on the phone. We're putting  
12 together an interagency agreement so that we can have a  
13 stronger working relationship with them. Do it so that it  
14 makes sense, so that we can truly build on a partnership  
15 that we already have.

16           I'm going to tell you what it's like, though, to  
17 be a regulated entity because some of you don't know. I'm  
18 not going to run your business for you. As a regulator,  
19 we're not going to run your business for you. We expect you  
20 to make the right business decisions for your company, for  
21 your customers that comply with the law.

22           So, you guys make your decisions and you justify  
23 it. You guys take the risk. And that risk is part of your  
24 business plan and part of how you run your business. You  
25 depend on consumers liking you. You depend on consumers

1 wanting to do business with you. I would highly recommend  
2 that you never, ever, ever forget that.

3 PACE, as a program, started in 2008-2009 -- 2007.  
4 It's time, now, for a regulatory scheme. This makes perfect  
5 sense. This is not bizarre. Would we have liked to have  
6 seen it earlier? Maybe. But we didn't. But this is pretty  
7 consistent with other regulatory schemes.

8 Those of you that have been business or seen me  
9 before, I've gone through, because I'm old, four economic  
10 downturns. For the State of California, we will do  
11 everything in our power, when we start talking about  
12 economic downturn, to make sure that consumers have the  
13 knowledge and are protected during another downturn, because  
14 it will happen. And my expectation is that you will do the  
15 same.

16 So, with that you will hear a lot from us. I  
17 really do want to talk to Mr. Eberle. Is that who it is  
18 from Yuba? Can I see you afterwards, please?

19 MR. EBERLE: Be happy to.

20 MS. OWEN: Okay, because you kind of make -- so,  
21 I'm an old auditor. He gets into the details, he gets into  
22 that stuff that just gets my brain starting to want to talk  
23 to you a little bit more afterwards.

24 I want to thank you all. Have a lovely, safe  
25 holiday season. And we'll be in touch, I'm sure.

1           Please, please, please communicate. You have lots  
2 of information. You have lots of ways to communicate with  
3 us. Don't forget how to communicate with us, please. Thank  
4 you.

5                       (Thereupon, the Meeting was  
6                       Adjourned at 10:50 a.m.)

7                                       --oOo--

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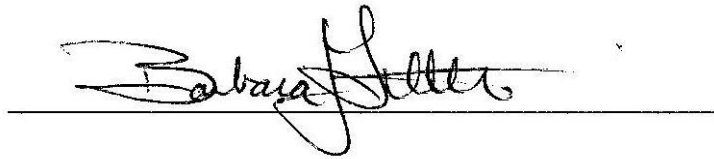
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**TRANSCRIBER'S CERTIFICATE**

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of December, 2017.

A handwritten signature in black ink, appearing to read "Barbara Little", is written over a horizontal line. The signature is cursive and somewhat stylized.

Barbara Little  
Certified Transcriber  
AAERT No. CET\*\*D-520