



## Western Riverside Council of Governments

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January 5, 2018

Mark Dyer  
Regulations Coordinator 1  
Department of Business Oversight  
Legal Division  
515 K Street, Suite 200  
Sacramento, CA 95814-405



INLAND NEWS GROUP

**Subject: WRCOG Comments Regarding Department of Business Oversight  
Rulemaking Process for Implementation of AB 1284**

Dear Mr. Dyer:

On behalf of the Western Riverside Council of Governments' (WRCOG) Property Assessed Clean Energy (PACE) Programs (including the statewide California HERO Program, and our regional programs: WRCOG HERO, CaliforniaFIRST, Spruce PACE, and PACE Funding), I would like to thank the Department of Business Oversight (DBO) on its effort to work with agencies throughout the state as the regulatory oversight authority for PACE in California. Thank you also for this opportunity to provide the following comments on the proposed rulemaking implementation of AB 1284.

### Definitions

- Please clarify that the definition of "PACE Program" in Section 22016 applies to "PACE Assessments" which would include assessments and special taxes. Currently Section 22016 only states that it applies to programs that finance improvements through "property assessments."
- Section 22018 states that an entity that does not administer a PACE program which finances improvements on real property with a market value of less than \$1,000,000 is not included in the definition of "Program Administrator." Please clarify that language if it is to mean that if the program administrator only solicits properties with a market value of each property under \$1,000,000 the entity would not have to comply with AB 1284?
- Please update to include "bond issuer" or "local government authority" (ex. Western Riverside Council of Governments, California Statewide Communities Development Authority, etc.) and define the role of the bond issuer/local government authority within the DBO oversight processes.

### Applications

- Capital Commitment – PACE program administrators are also responsible for securing capital to fund improvements financed by PACE Assessments. It would be useful to determine whether the program administrator has obtained a commitment for capital.
- Verification System – PACE program administrators are responsible for verifying the authenticity of the property owners and verifying underwriting criteria. Having a system in place for verifying such information will be crucial to ensuring consumers are protected against fraudulent applications and compliance with underwriting criteria.

- Identification of PACE Program(s) under which program administrator proposes to serve. Only a public agency may create a PACE Program. The public agency will enter into an administration service agreement with one or more program administrators to administer the PACE program. Program administrators should identify which PACE Program(s) under which they are proposing to serve or currently serving. Without such affiliation with a PACE Program, the Program Administrator would not be able to provide its services.

### **Annual Report Data**

- Number of assessment contracts entered into and aggregate principal amount of the assessment contracts.
- Number of PACE Solicitors and PACE Solicitor Agents enrolled by program administrator.
- Total number of complaints registered by property owners, nature of complaints, number resolved, number pending on an annual basis.
- Names of PACE Solicitors or PACE Solicitor Agents suspended or terminated by program administrator and reason.
- Pending lawsuits against program administrator or lawsuits against any PACE Solicitor or PACE Solicitor Agent enrolled by such program administrator arising out of the solicitation by such PACE Solicitor or PACE Solicitor Agent on behalf of such program administrator of property owners to enter into an assessment contract.
- Ensure that privacy provisions are in place, to prevent Property Owners being targeted by refinance companies, PACE Solicitors, etc. From WRCOG's own Consumer Protections Policy, we include the following language, "All reports shall include only aggregate data, excluding any sensitive consumer information." WRCOG strives to maintain the information of the property owner private (APN, zip code, Property Owner name, type of installation), and does not release APNs, or personally identifying information to the public or wish for that information to be readily available in a publicly accessible record.

### **Advertising Standards**

- Representations regarding tax deductibility of assessments or special taxes levied paid in connection with an assessment contract.
- Only improvements statutorily authorized to be financed should be advertised as eligible items to be financed by a PACE Assessment.
- As part of the Solicitor training, PACE Solicitors should be expressly forbidden to:
  - Suggest or imply in any way that PACE is a government assistance program
  - Suggest or imply that PACE is a free program
  - Suggest or imply that PACE does not involve a financial obligation that the homeowner must repay
  - Use check facsimiles to dramatize the amount of PACE Program financing available or presented as if a negotiable instrument
- PACE Solicitors must not violate federal or State "Do Not Call" laws
- The PACE Administrator is responsible for developing written processes that are to be provided to the bond issuer upon development and when updated by the Administrator
- Depending on resources available either by the DBO, the bond issuer, or the PACE Administrator, have PACE Solicitors submit marketing materials annually to the DBO (bond issuer or PACE Administrator) or before releasing the marketing materials to the public.

### **Books and Records**

- Property owner disclosures, assessment contract, data files containing property information, prepayments and complaint information and should be maintained for life of each assessment plus 3 years.

### **Complaint Processes and Procedures**

- Requiring an Administrator to have several methods of contact: online, email, or by phone. Having dedicated PACE Administrator staff meant to handle complaints also helps streamline the process for Administrators, bond issuers, Property Owners, and PACE Solicitors.

### **Unfair Business Practices**

- Potential for unfair business practice seems more likely at the PACE Solicitor level rather than PACE Administrator level.
- Price manipulation based on protected classes and otherwise. There is a potential that PACE Solicitors could charge seniors, other protected classes or the owners of properties in different geographic areas varying rates. Program administrators should be required to monitor the average cost of improvements regionally to ensure that a Solicitor's price is not excessively high.
- The PACE Solicitor should not be provided with an eligible PACE amount that is available to the Property Owner. The Property Owner should be knowledgeable about the amount of financing available to them and may utilize the financing at their discretion. PACE Solicitors have in the past had access to the eligible financing available and have utilized as much of the financing as possible when quoting or completing PACE projects.

### **Periodic Review Standards**

- PACE Solicitor enrollment and initial and continued training/education compliance
- Dispute resolution process
- List of suspended/terminated PACE Solicitors and reason why terminated
- The PACE Administrators are complying with the statutes and their program's consumer protections policy – that underwriting criteria is followed, that confirm term calls are recorded and accurate, and that the Program is ONLY financing energy efficient products.

### **Solicitor Enrollment Standards or Processes**

- If a solicitor has been suspended or terminated by a PACE Administrator, that reasoning should be provided to the DBO and the bond issuer.

### **Solicitor Monitoring Standards**

- Criteria should be established which takes into account not only frequency but also severity of offense.
- Annual recertification would include submittal of bond/insurance information, recertification of code of conduct, and review of Solicitors' standing with the CSLB, and possible sample of marketing materials.

### **Cancelling Enrollment and Notifying the Department**

- Develop a criteria threshold for suspension and/or termination. When a solicitor is suspended or terminated, the Administrator must submit the terms for the suspension
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and/or termination. DBO could then decide to suspend and/or terminate the solicitor from a/all PACE Programs in California. At that time, the DBO would need to distribute that information to the PACE Administrators and the bond issuers.

### **Education Program**

- Education standards should provide a detailed training on financing terms, i.e. repayment terms, assessment levy process, interest rate, improvements eligible to be financed and step by step understanding of process from application to funding.
- Education materials should clearly address required disclosures and prohibited marketing representations.
- PACE intro – what is PACE, how does it work, what products are eligible, how to sell PACE to seniors, how is it repaid, what to expect with PACE transactions/buying/selling a property with a PACE assessment, and how to effectively reach someone with the PACE Administrator or the bond issuer for help.

### **Underwriting**

- Under Section 22687, a Program Administrator must determine whether a property owner “has a reasonable ability to pay.” This definition is very broad and could lead to a wide variety of industry practices. A more definitive definition of “reasonable ability to pay” would be useful.
- The PACE solicitor should not be provided with an eligible PACE amount that is available to the Property Owner. The Property Owner should be knowledgeable about the amount of financing available to them and may utilize the financing at their discretion. PACE Solicitors have in the past had access to the eligible financing available and have utilized as much of the financing as possible when quoting or completing PACE projects.

### **SB 242**

- Ties the timing of the three day right to cancel a home improvement contract (HIC) with that of an assessment contract. Requiring a Program Administrator to collect the home improvement contract upon application for an assessment contract would be useful to check compliance with this provision.
- Verification that the Property Owner has the HIC could be added to the confirm terms call.

### **Exemptions from Enrollment**

- PACE Solicitors not engaged with residential PACE should not be subject to the six hours of training. However, if a Commercial PACE Solicitor also negotiates residential PACE transactions, the six hours of training will apply.

### **Additional Comments**

- In Section 22687, a Property Owner may waive their right to cancel in the event of an emergency installation. This waiver should be sent to the bond issuer as part of the submitted PACE financing application. This would allow for timely tracking of projects and/or PACE solicitors and prevent abuse of the emergency policy instead of waiting for the release of the annual DBO report.
  - For future consideration, create a dialogue with PACE bond issuers and County Tax Collectors to develop a comprehensive PACE prepayment process where a Property Owner may be able to amend their annual tax bill if the PACE financing is paid off before the assessment maturation.
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Again, I would like to thank the Department of Business Oversight for taking the time to receive and review our comments. We look forward to working with you on the proposed rulemaking implementation of AB 1284. WRCOG respectfully requests an opportunity to meet with the appropriate staff at DBO prior to the rulemaking release to more thoroughly discuss the implications of the proposed rules. Having reviewed and processed over 82,000 PACE assessments since our program launched in 2012, we are very interested in sharing our experiences with DBO. If you have any questions or need additional information, I can be reached at (951) 405-6720 or at [cdailey@wrcog.us](mailto:cdailey@wrcog.us).

Sincerely,

A handwritten signature in blue ink, appearing to read 'Casey Dailey', with a large, sweeping initial 'C' on the left and a more complex, stylized signature on the right.

Casey Dailey  
Director of Energy and Environmental Programs