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City of Las Cruces[®]
 PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 3 Ordinance/Resolution# 11-049 Council District:

For Meeting of August 23, 2010
 (Adoption Date)

TITLE: A RESOLUTION IN SUPPORT OF FEDERAL LEGISLATION TO PROTECT PROPERTY-ASSESSED CLEAN ENERGY (PACE) PROGRAMS AS A VIABLE TOOL FOR LOCAL GOVERNMENTS TO ENCOURAGE PRIVATE INVESTMENT IN RENEWABLE ENERGY AND ENERGY EFFICIENCY PROJECTS.

PURPOSE(S) OF ACTION: Such legislation, if passed, would allow Doña Ana County and the City of Las Cruces to move forward with creation of a renewable energy finance district.

Drafter and Staff Contact: Thomas Schuster <i>TS</i>		Department: Community Develop.		Phone: 528-3069	
Department	Signature	Phone	Department	Signature	Phone
Department Director	<i>DW</i>		Budget	<i>Michael Y. [unclear]</i>	541-2107
Other			Assistant City Manager	<i>[Signature]</i>	541-2271
Legal	<i>[Signature]</i>	541-2128	City Manager	<i>[Signature]</i>	541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: The City has been working with Dona Ana County since September 2009 to create a Renewable Energy Finance District. The District would issue bonds to pay for renewable energy system installation on private property, and property owners would pay back the cost of the bond through a tax assessment on their property. Participation in the program would be voluntary. Similar financial mechanisms have been established in other parts of the country and have been generally successful in spurring private investment in clean energy that benefits the public by reducing emissions and creating local green jobs.

However, the viability of such programs has recently been put in doubt by Fannie Mae, Freddie Mac, and their federal regulator, the Federal Housing Finance Authority (FHFA). On May 5, 2010 Fannie Mae and Freddie Mac issued identical lender letters (attached) stating that PACE loans which are a senior lien to a mortgage violate the terms of their Uniform Security Instruments, and thus they cannot purchase and securitize these mortgages. Since most mortgages are sold to Fannie Mae and Freddie Mac, this effectively prohibits any PACE loans that have senior lien status.

On July 6, 2010 the FHFA issued a notice (attached) that essentially validates the May 5, 2010 lender letter and urges a moratorium on PACE programs with senior liens until "safety and soundness" concerns can be addressed. FHFA directs Fannie and Freddie to grandfather existing PACE loans. The letter indicates that PACE programs could be acceptable provided that they contain appropriate underwriting guidelines and consumer protection standards. However, FHFA instructs Fannie and Freddie to adjust their loan-to-value ratios for mortgages

originating in municipalities with senior-lien PACE programs. This could have the effect of reducing the loan amount that any prospective property owner could qualify for, regardless of whether they are participating in PACE.

Per New Mexico State Statute, PACE loans do enjoy senior lien status. Although a program could comply with the Uniform Security Instrument, and thus satisfy Fannie, Freddie and the FHFA by making the PACE loan a junior lien, this is generally not considered a viable option, as it would result in bond interest rates that are completely unattractive to property owners considering participation in the program.

In response to this issue, federal legislation has been introduced to preserve PACE as a viable financial mechanism. HB 5766 (attached), and its identical Senate companion, S 3642, would amend the Uniform Security Instrument used by Fannie and Freddie to allow PACE liens that comply with Department of Energy Guidelines issued in May 2010 (attached). The legislation also prohibits the use of more restrictive underwriting criteria in communities that have PACE programs, thus protecting all mortgage seekers in the community. This Resolution expresses support for such legislation.

SUPPORT INFORMATION:

1. Resolution
2. Exhibit "A" - Fannie Letter
3. Exhibit "B" - FHFA Statement
4. Exhibit "C" - Draft Legislation – HB 5766
5. Exhibit "D" - DOE Guidelines referenced in legislation

SOURCE OF FUNDING:

N/A	Is this action already budgeted?		There are no expenditures proposed.	
	Yes	<input type="checkbox"/>	See fund summary below	
	No	<input type="checkbox"/>	If No, then check one below:	
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____	
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)	
		<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.	
Does this action create any revenue?				
	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____	
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.	

FUND SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution in support of proposed federal legislation. The Resolution will be provided to our congressional delegation and used in federal lobbying efforts on behalf of PACE programs.
2. Vote "No"; this will deny the Resolution.
3. Vote to "Amend"; this will modify the Resolution, which could then be adopted.
4. Vote to "Table"; this will postpone the Resolution and Council could direct staff accordingly. A significant delay may decrease the relevance of any Resolution given the short congressional calendar remaining.

RESOLUTION NO. 11-049**A RESOLUTION IN SUPPORT OF FEDERAL LEGISLATION TO PROTECT PROPERTY-ASSESSED CLEAN ENERGY (PACE) PROGRAMS AS A VIABLE TOOL FOR LOCAL GOVERNMENTS TO ENCOURAGE PRIVATE INVESTMENT IN RENEWABLE ENERGY AND ENERGY EFFICIENCY PROJECTS.**

The City Council is informed that:

WHEREAS, utility bills represent a major operating cost for home and business owners; and

WHEREAS, persistent unemployment, particularly in the construction industry, continues to burden our families and community; and

WHEREAS, reliance on fossil fuels continues to threaten energy security, public health, and the environment; and

WHEREAS, residential and commercial buildings consume nearly 40% of all electricity and are responsible for 40% of U.S. annual carbon dioxide emissions; and

WHEREAS, investing in cost-effective energy efficiency and renewable energy improvements to homes and businesses can save energy, cut utility bills, create thousands of local jobs, reduce reliance on fossil fuels, and dramatically reduce greenhouse gas emissions; and

WHEREAS, the upfront cost and potentially long payback periods prevent property owners from making otherwise cost-effective clean energy improvements; and

WHEREAS, Property Assessed Clean Energy (PACE) financing programs are an innovative local government solution to help property owners finance energy efficiency and renewable energy improvements to their homes and businesses; and

WHEREAS, twenty-two states, including New Mexico, have passed laws enabling local governments to develop PACE programs; and

WHEREAS, White House and the U.S. Department of Energy strongly support PACE, have dedicated \$150 million to develop local PACE programs and issued guidelines to ensure that PACE programs meet safety and soundness requirements and adequately protect both bond buyers and property owners; and

WHEREAS, despite PACE's great promise, the Federal Housing Finance Agency (FHFA) and the Office of the Comptroller of the Currency (OCC) on July 6th

issued statements that immediately forced existing PACE programs to halt operations and froze the development of dozens of PACE programs nationwide.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the New Mexico congressional delegation is urged to support legislation that clearly guarantees local governments the right to assess voluntary special taxes for clean energy programs and restore the promise of PACE.

(II)

THAT such legislation should adopt the underwriting standards developed by the Department of Energy to protect against possible defaults.

(III)

THAT the legislation should prohibit discrimination in lending against people in communities that have adopted PACE programs.

(IV)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____ 2010.

(SEAL)

ATTEST:

City Clerk

Moved by: _____

Seconded by: _____

Approved as to Form:



City Attorney

APPROVED:

Mayor

VOTE:

Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Connor: _____
Councillor Sorg: _____
Councillor Small: _____
Councillor Pedroza: _____
Councillor Thomas: _____

**Lender Letter LL-2010-06****May 5, 2010****TO: All Fannie Mae Single-Family Sellers and Servicers****Property Assessed Clean Energy Loans**

Fannie Mae has received a number of questions from seller-servicers regarding government-sponsored energy loans, sometimes referred to as Property Assessed Clean Energy (PACE) loans. PACE loans generally have automatic first lien priority over previously recorded mortgages. The terms of the Fannie Mae/Freddie Mac Uniform Security Instruments prohibit loans that have senior lien status to a mortgage. As PACE programs progress through the experimental phase and beyond, Fannie Mae will issue additional guidance to lenders as may be needed from time to time.

Fannie Mae supports energy-efficiency initiatives, and is willing to engage with federal and state agencies as they consider sustainable programs to facilitate lending for energy-efficiency home retrofits, while preserving the status of mortgage loans originated as first liens.

Questions should be directed to Resource.Center@fanniemae.com with the subject line "PACE." Lenders may also wish to consult with their federal regulators, who share concerns about PACE programs.

Marianne E. Sullivan
Senior Vice President
Single-Family Chief Risk Officer

FEDERAL HOUSING FINANCE AGENCY**STATEMENT**

For Immediate Release

July 6, 2010

Contact: Corinne Russell (202) 414-6921
Stefanie Mullin (202) 414-6376**FHFA Statement on Certain Energy
Retrofit Loan Programs**

After careful review and over a year of working with federal and state government agencies, the Federal Housing Finance Agency (FHFA) has determined that certain energy retrofit lending programs present significant safety and soundness concerns that must be addressed by Fannie Mae, Freddie Mac and the Federal Home Loan Banks. Specifically, programs denominated as Property Assessed Clean Energy (PACE) seek to foster lending for retrofits of residential or commercial properties through a county or city's tax assessment regime. Under most of these programs, such loans acquire a priority lien over existing mortgages, though certain states have chosen not to adopt such priority positions for their loans.

First liens established by PACE loans are unlike routine tax assessments and pose unusual and difficult risk management challenges for lenders, servicers and mortgage securities investors. The size and duration of PACE loans exceed typical local tax programs and do not have the traditional community benefits associated with taxing initiatives.

FHFA urged state and local governments to reconsider these programs and continues to call for a pause in such programs so concerns can be addressed. First liens for such loans represent a key alteration of traditional mortgage lending practice. They present significant risk to lenders and secondary market entities, may alter valuations for mortgage-backed securities and are not essential for successful programs to spur energy conservation.

While the first lien position offered in most PACE programs minimizes credit risk for investors funding the programs, it alters traditional lending priorities. Underwriting for PACE programs results in collateral-based lending rather than lending based upon ability-to-pay, the absence of Truth-in-Lending Act and other consumer protections, and uncertainty as to whether the home improvements actually produce meaningful reductions in energy consumption.

Efforts are just underway to develop underwriting and consumer protection standards as well as energy retrofit standards that are critical for homeowners and lenders to understand the risks and rewards of any energy retrofit lending program. However, first liens that disrupt a fragile housing finance market and long-standing lending priorities, the absence of robust underwriting standards to protect homeowners and the lack of energy retrofit standards to assist homeowners, appraisers, inspectors and lenders determine the value of retrofit products combine to raise safety and soundness concerns.

On May 5, 2010, Fannie Mae and Freddie Mac alerted their seller-servicers to gain an understanding of whether there are existing or prospective PACE or PACE-like programs in jurisdictions where they do business, to be aware that programs with first liens run contrary to the Fannie Mae-Freddie Mac Uniform Security Instrument and that the Enterprises would provide additional guidance should the programs move beyond the experimental stage. Those lender letters remain in effect.

Today, FHFA is directing Fannie Mae, Freddie Mac and the Federal Home Loan Banks to undertake the following prudential actions:

1. For any homeowner who obtained a PACE or PACE-like loan with a priority first lien prior to this date, FHFA is directing Fannie Mae and Freddie Mac to waive their Uniform Security Instrument prohibitions against such senior liens.
2. In addressing PACE programs with first liens, Fannie Mae and Freddie Mac should undertake actions that protect their safe and sound operations. These include, but are not limited to:
 - Adjusting loan-to-value ratios to reflect the maximum permissible PACE loan amount available to borrowers in PACE jurisdictions;
 - Ensuring that loan covenants require approval/consent for any PACE loan;
 - Tightening borrower debt-to-income ratios to account for additional obligations associated with possible future PACE loans;
 - Ensuring that mortgages on properties in a jurisdiction offering PACE-like programs satisfy all applicable federal and state lending regulations and guidance.

Fannie Mae and Freddie Mac should issue additional guidance as needed.

3. The Federal Home Loan Banks are directed to review their collateral policies in order to assure that pledged collateral is not adversely affected by energy retrofit programs that include first liens.

Nothing in this Statement affects the normal underwriting programs of the regulated entities or their dealings with PACE programs that do not have a senior lien priority. Further, nothing in these directions to the regulated entities affects in any way underwriting related to traditional tax programs, but is focused solely on senior lien PACE lending initiatives.

FHFA recognizes that PACE and PACE-like programs pose additional lending challenges, but also represent serious efforts to reduce energy consumption. FHFA remains committed to working with federal, state, and local government agencies to develop and implement energy retrofit lending programs with appropriate underwriting guidelines and consumer protection standards. FHFA will also continue to encourage the establishment of energy efficiency standards to support such programs.

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The Federal Housing Finance Agency regulates Fannie Mae, Freddie Mac and the 12 Federal Home Loan Banks. These government-sponsored enterprises provide more than \$5.9 trillion in funding for the U.S. mortgage markets and financial institutions.

I

111TH CONGRESS
2^D SESSION

H. R. 5766

To ensure that the underwriting standards of Fannie Mae and Freddie Mac facilitate the use of property assessed clean energy programs to finance the installation of renewable energy and energy efficiency improvements.

IN THE HOUSE OF REPRESENTATIVES

JULY 15, 2010

Mr. THOMPSON of California (for himself, Ms. WOOLSEY, Ms. MATSUI, Mr. ISRAEL, Ms. ZOE LOFGREN of California, Mr. FARR, Mr. STARK, Ms. LORETTA SANCHEZ of California, Ms. ESHOO, Ms. WATSON, Mr. SHERMAN, Mr. BERMAN, Ms. SPEIER, Mrs. DAVIS of California, Mr. MCNERNEY, Ms. SCHWARTZ, Mr. RANGEL, Mr. LEVIN, Mr. MCDERMOTT, Ms. BERKLEY, Mr. NEAL of Massachusetts, Mr. BLUMENAUER, Mr. YARMUTH, Mr. SCHIFF, Mr. TIERNEY, Mr. GEORGE MILLER of California, Mr. GARAMENDI, Mr. WAXMAN, Mr. POLIS of Colorado, and Mr. SARBANES) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To ensure that the underwriting standards of Fannie Mae and Freddie Mac facilitate the use of property assessed clean energy programs to finance the installation of renewable energy and energy efficiency improvements.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “The PACE Assessment
3 Protection Act of 2010”.

4 **SEC. 2. TREATMENT OF PACE PROGRAMS BY FANNIE MAE
5 AND FREDDIE MAC.**

6 (a) **ADOPTION OF UNDERWRITING STANDARDS.—**
7 Not later than the expiration of the 60-day period that
8 begins upon the date of the enactment of this Act, the
9 Federal National Mortgage Association and the Federal
10 Home Loan Mortgage Corporation shall adopt under-
11 writing standards that are consistent with the Guidelines
12 for Pilot PACE Financing Programs issued on May 7,
13 2010, by the Department of Energy. Liens or other prop-
14 erty obligations that secure property taxes or assessments
15 under a PACE program and are consistent with such
16 standards shall be considered to comply with the Uniform
17 Instruments of such Association and Corporation and
18 shall not constitute a default on an existing mortgage or
19 trigger the exercise of lender’s remedies for a property
20 with such a lien. With respect to a property that meets
21 the underwriting criteria of the Association and the Cor-
22 poration without consideration of the PACE program lien,
23 the Association and the Corporation shall not require re-
24 payment of a PACE program tax or assessment in order
25 for a property owner to finance, refinance or transfer the
26 property. The underwriting standards shall provide that,

1 in the event that a tax or assessment under a PACE pro-
2 gram is delinquent, only the unpaid delinquent amount
3 along with applicable penalties, interest and costs will be
4 subject to foreclosure and not the entire amount.

5 (b) PROHIBITION OF DISCRIMINATION.—The Federal
6 Housing Finance Agency, the Federal National Mortgage
7 Association, and the Federal Home Loan Mortgage Cor-
8 poration, and all Federal agencies and all entities char-
9 tered under Federal law shall not discriminate against
10 communities implementing or participating in a PACE
11 program, including by prohibiting lending within the com-
12 munity or requiring more restrictive underwriting criteria
13 for properties within the community.

14 (c) DEFINITION OF PACE PROGRAM.—For purposes
15 of this section, the term “PACE program” means a prop-
16 erty assessed clean energy program under which a State
17 or political subdivision of a State levies taxes or assess-
18 ments on residential, commercial, agricultural, and other
19 real property to finance the installation of renewable en-
20 ergy and energy efficiency improvements.

○



Department of Energy
Washington, DC 20585

Guidelines for Pilot PACE Financing Programs

May 7, 2010

This document provides best practice guidelines to help implement the Policy Framework for PACE Financing Programs announced on October 18, 2009.¹ Property Assessed Clean Energy (PACE) financing programs allow state and local governments, where permitted by state law, to extend the use of land-secured financing districts to fund energy efficiency and renewable energy improvements on private property.² PACE programs attach the obligation to repay the cost of improvements to the property, not to the individual borrower. After consultation within the federal government and with other stakeholders, the Department of Energy has prepared the following Best Practices to help ensure prudent financing practices during the current pilot PACE programs.

These best practice guidelines are significantly more rigorous than the underwriting standards currently applied to land-secured financing districts. Especially in light of the exceptionally challenging economic environment and recovering housing market, the following best practice guidelines for pilot PACE financing programs are important to provide an extra layer of protection to both participants who voluntarily opt into PACE programs, and to lenders who hold mortgages on properties with PACE tax liens. These best practice guidelines may evolve over time as we learn more about the performance of PACE programs and are able to identify new best practices.³ All pilot PACE financing programs are strongly encouraged to follow these best practice guidelines. This document is divided into two sections: Program Design Best Practice Guidelines and Assessment Underwriting Best Practice Guidelines.

¹ The Policy Framework for PACE Financing Programs is available here:
http://www.whitehouse.gov/assets/documents/PACE_Principles.pdf.

² For more information on PACE programs, please visit:
<http://www1.eere.energy.gov/wip/solutioncenter/financialproducts/PACE.html>. PACE programs are paid through a tax lien on the property. Lien priority is a matter of state law, and these best practices do not (and cannot) preempt state law.

³ These best practice guidelines are primarily for the residential market. Different standards may be appropriate in non-residential markets.

Program Design Best Practice Guidelines:

Local governments should consider the following program design features to increase the reliability of energy and economic performance for the benefit of program participants, mortgage holders, and investors.

1. Expected Savings-to-Investment Ratio (SIR) Greater Than One⁴

The primary rationale for PACE programs is to pursue a legally-defined “public purpose”, which generally includes environmental, health, and energy independence benefits.⁵ Although traditional land-secured assessment districts do not require projects to “pay for themselves”, PACE financing should generally be limited to cost effective measures to protect both participants and mortgage holders until PACE program impacts become more widely understood.

The financed package of energy improvements should be designed to pay for itself over the life of the assessment. This program attribute improves the participant’s debt-to-income ratio, increasing the participant’s ability to repay PACE assessments and other debt, such as mortgage payments. Local governments should consider three program design features to ensure that the expected SIR is greater than one:⁶

- An energy audit and modeling of expected savings to identify energy efficiency and renewable energy property improvement measures that are likely to deliver energy and dollar savings in excess of financed costs over the assessment term. Local governments should limit investment to those identified measures.

⁴ SIR = [Estimated savings over the life of the assessment, discounted back to present value using an appropriate discount rate] divided by [Amount financed through PACE assessment]

Savings are defined as the positive impacts of the energy improvements on participant cash flow. Savings can include reduced utility bills as well as any payments for renewable energy credits or other quantifiable environmental and health benefits that can be monetized. Savings should be calculated on an annual basis with an escalator for energy prices based either on the Energy Information Agency (EIA) U.S. forecast or a substantiated local energy price escalator.

⁵ Specific public purposes are defined by the state’s enabling legislation, which may vary somewhat between states. Existing legislation is available here:

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

⁶ These program options are not mutually exclusive and programs should consider deploying them in concert. In addition, these measures could be coordinated with the proposed HOMESTAR’s Silver and Gold guidelines. More information on HOMESTAR is available here:

<http://www.whitehouse.gov/the-press-office/fact-sheet-homestar-energy-efficiency-retrofit-program>

- In lieu of audits, programs may choose to limit eligibility to those measures with well-documented energy and dollar savings for a given climate zone. There are a number of energy efficiency and renewable energy investments that are most likely to yield a SIR of greater than one for most properties in a region.
- Encourage energy efficiency before renewable energy improvements. The economics of renewable energy investments can be enhanced when packaged with energy efficiency measures. The SIR should be calculated for the entire package of investments, not individual measures.

2. The Term of the Assessment Should Not Exceed the Useful Life of the Improvements

This best practice guidelines document is intended to ensure that a property owner's ability to repay is enhanced throughout the life of the PACE assessment by the energy savings derived from the improvements. It is important to note that the useful life of the measure often exceeds the assessment term.

3. Mortgage Holder of Record Should Receive Notice When PACE Liens Are Placed

Mortgage holders should receive notice when residential property owners fund improvements using a PACE assessment.⁷

4. PACE Lien Non-Acceleration Upon Property Owner Default

In states where non-acceleration of the lien is standard for other special assessments, it should also be standard for PACE assessments. After a foreclosure, the successor owners are responsible for future assessment payments. Non-acceleration is an important mortgage holder protection because liability for the assessment in foreclosure is limited to any amount in arrears at the time; the total outstanding assessed amount is not due in full.

5. The Assessment Should Be Appropriately Sized

PACE assessments should generally not exceed 10% of a property's estimated value (i.e. a property value-to-lien ratio of 10:1). In addition, because of the administrative requirements of administering PACE programs, assessments should generally not be issued for projects below a minimum cost threshold of approximately \$2500. These measures ensure that improvements are "right-sized" for properties and for the administrative costs of piloting PACE programs. PACE programs may also choose to set the maximum assessment relative to median home values.

⁷ A different standard may apply to non-residential properties.

6. Quality Assurance and Anti-Fraud Measures

Quality assurance and anti-fraud measures are essential protections for property owners, mortgage holders, investors, and local governments. These measures should include:

- Only validly licensed auditors and contractors that adhere to PACE program terms and conditions should be permitted to conduct PACE energy audits and retrofits. Where feasible or necessary, auditors and contractors should have additional certifications appropriate to the installed measures.
- Inspections should be completed on at least a portion of participating properties upon project completion to ensure that contractors participating in the PACE program are adequately performing work.
- If work is not satisfactorily completed, contractor payment should be withheld until remedied. If not satisfactorily remedied, programs should disqualify contractors from further PACE-related work.
- Property owners should sign-off before payment is issued for the work.

7. Rebates and Tax Credits

The total amount of PACE financing should be net of any expected direct cash rebates for the energy efficiency or renewable energy improvements chosen. However, other non-direct cash incentives can be more difficult to manage. For example, calculating an expected income tax credit can be complicated, as not all participants will have access to the tax credit and there will be time lags between project completion and tax credit monetization. Programs should therefore consider alternative structures for financing this gap, including assignment of rebates and tax credits to repay PACE assessments, short-term assessment additions, and partnering with third party lenders that offer short-term bridge financing. At the minimum, programs should provide full disclosure to participants on the implications and options available for monetizing an income tax credit.

8. Participant Education

PACE may be an unfamiliar financing mechanism to program participants. As such, it is essential that programs educate potential participants on how the PACE model works, whether it is a property owner's most appropriate financing mechanism, and the opportunities and risks PACE program participation creates for property owners. Programs should clearly explain and provide disclosures of the following:

- How PACE financing works

- Basic information on other financing options available to property owners for financing energy efficiency and renewable energy investments, and how PACE compares
- All program fees and how participants will pay for them
- Effective interest rate including all program fees, consistent with the Good Faith Estimate (GFE) of the Real Estate Settlement Procedure Act (RESPA) and the early and final disclosure of the Truth in Lending Act (TILA).
- PACE assessment impact on escrow payments (if applicable)
- Risk that assessment default may trigger foreclosure and property loss
- Information on transferring the assessment at time of sale
- Options for and implications of including tax credits in the financed amount

9. Debt Service Reserve Fund

For those PACE programs that seek third party investors, including investors in a municipal bond to fund the program, an assessment reserve fund should be created to protect investors from late payment or non-payment of PACE assessments.

10. Data Collection

Pilot programs should collect the data necessary to evaluate the efficacy of PACE programs. Examples of typically collected data would include: installed measures, investment amount, default and foreclosure data, expected savings, and actual energy use before and after measures installation. To the extent possible, it's important that programs have access to participant utility bills, ideally for 18 months before and after the improvements are made. The Department of Energy will provide more detailed information on collecting this data, obtaining permission to access utility bills, and how to report program information to enable a national PACE performance evaluation.

Assessment Underwriting Best Practices Guidelines:

Local governments should design underwriting criteria to reduce the risk of default and impairment to the property's mortgage holders. Many best practices for reducing these risks are included in the previous section. In addition, underwriting criteria for individual assessments should include the following:

1. Property Ownership

- Check that applicant has clear title to property and that the property is located in the financing district.

- Check the property title for restrictions such as details about power of attorney, easements, or subordination agreements.

2. Property-Based Debt and Property Valuation

- Estimated property value should be in excess of property owner's public and private debt on the property, including mortgages, home equity lines of credit (HELOCs), and the addition of the PACE assessment, to ensure that property owners have sufficient equity to support the PACE assessment. Local governments should be cautious about piloting the PACE model in areas with large numbers of "underwater" mortgages.
- To avoid placing an additional tax lien on properties that are in distress, have recently been in distress, or are at risk for distress, the following should be verified:
 - There are no outstanding taxes or involuntary liens on the property in excess of \$1000 (i.e. liens placed on property for failure of the owner to comply with a payment obligation).
Property is not in foreclosure and there have been no recent mortgage or other property-related debt defaults.
- Programs should attain estimated property value by reviewing assessed value. This is typically used in assessment districts. If assessed value appears low or high, programs should review comparable market data to determine the most appropriate valuation. If programs believe the estimated value remains inaccurate or there is a lack sufficient comparable market data to conduct an analysis, they should conduct a desktop appraisal.⁸

3. Property Owner Ability to Pay

PACE programs attach the obligation to repay the cost of improvements to the property (not to the individual borrower). The standard underwriting for other special assessments only consists of examining assessed value to public debt, the total tax rate, and the property tax delinquency rate. However, we deem certain precautions important due to the current vulnerability of mortgage lenders and of the housing market in many regions. These precautions include:

- A Savings-to-Investment Ratio (SIR) greater than one, as described above, to maintain or improve the property owner's debt-to-income ratio.
- Property owner is current on property taxes and has not been late more than once in the past 3 years, or since the purchase of the house if less than three years.⁹

⁸ A desktop appraisal involves a licensed appraiser estimating the value of a property without a visual inspection. These appraisals cost approximately \$100.

⁹ Applicants that have purchased the property within 3 years have recently undergone rigorous credit analyses that compensate for the short property tax payment history.

- Property owner has not filed for or declared bankruptcy for 7 years.

These best practice guidelines will evolve over time with continued monitoring of the performance of pilot PACE financing programs.