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August 17, 2018

RE: Solar Energy System Disclosure Document Supporting Information

To Whom It May Concern:

On behalf of the California Low-Income Consumer Coalition, the National Housing Law Project and the National Consumer Law Center on behalf of its low-income clients, we write to provide comments on the Contractor's State Licensing Board's proposed disclosure form regarding solar panel installation.

CLICC is a statewide network of nonprofits concerned with policy and legal issues that disproportionately affect low-income Californians, and, in particular, communities of color. Our vision is to ensure that all people, regardless of their income or background, have opportunities under the law to achieve their full potential.

The National Housing Law Project (NHLP) is a non-profit law and advocacy center established in 1968 and based in San Francisco, California. NHLP is dedicated to advancing housing justice by using the power of the law to increase and preserve the supply of decent affordable housing, improve existing housing conditions, expand and enforce low-income tenants' and homeowners' rights, and increase opportunities for racial and ethnic minorities.

The National Consumer Law Center, Inc. is a non-profit corporation, founded in 1969, providing legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country.

CLICC, NHLP and NCLC appreciate the CSLB's interest in protecting consumers from fraudulent and predatory solar panel salespeople and contracts. Many of the individuals who sign up for solar panel installations fall into three primary categories: elderly individuals, individuals with disabilities, and individuals whose primary language is not English – all people who are particularly susceptible to unfair and oppressive home solicitation contracts.

The undersigned offer two types of suggestions/queries on the draft form: (1) overarching questions and comments that apply to the whole document, and (2) specific questions and comments addressed to particular parts of the document.

**I. General comments/questions that apply to the entire disclosure form:**

- Who is supposed to complete this disclosure form? Will the form be completed by the consumer or by the sales representative?
- Will the form be required to be completed prior to any contract being signed? How will that requirement be enforced? How will sales representatives be prevented from providing future dates on a contract, or providing back dates on the disclosure form?
  - The question arises because, under “Required Signatures” at the end, the form states, “I have read and understand this Solar Energy System Disclosure Document. I understand that this disclosure is for informational purposes, and that I am not obligated to sign a contract for installation of a solar energy system.” We are concerned – given our experience with home solicitations – that this form will not be completed before the homeowner is pressured into signing a contract. More often than not, the signature on the contract is obtained the day that the solicitor knocks on the homeowner’s door. How can the CSLB ensure that this document is completed *prior* to any contract being signed? We want to avoid the scenario where the homeowner decides, after receiving the disclosure document, not to move forward but has already signed a contract – and the sales rep/company comes back and claims breach of contract.
- How does this form relate to the PACE Financing Estimate and Disclosure? The instructions state that the PACE disclosures satisfy the requirements “of this section with respect to the financing contract only,” but not the underlying installation contract. Does that mean that if PACE financing is contemplated, the contractor must nevertheless fill out Section 2 of the solar disclosure form? For the disclosures to be consistent, the solar disclosure form and the PACE Financing Estimate and Disclosure would have to be given to the consumer at the same time. We suggest a rule that if the contractor does not fill out Section 2, the seller should be required to give the PACE Financing Estimate and Disclosure to the homeowner before the installation contract is signed.
- On the disclosure cover sheet, the description of the right to cancel should state that the buyer can cancel “without any cost or penalty.”

**II. Section-by-section comments.**

We propose that the Questions on the draft form be modified as follows:

**Section 2: Financing**

**Question 6:**

**Original:** “Is there a payment late fee? What is it? When will it apply?”

**Suggested replacement:** “Is there a fee if my monthly payment is late? What is the fee? When is a payment considered late?”

**Question 7:**

**Original:** “Is there a fee for failing to use automatic bank withdrawals for monthly payments?”

**Suggested replacement:** “Is there a fee if I do not use automatic bank withdrawals for monthly payments?”

**Question 8:**

**Original:** “Is there a prepayment fee? What is it?”

**Suggested replacement:** “Is there a fee or penalty for paying off the loan early? What is the fee/penalty? When does it apply?”

**Question 9:**

**Original:** “What are the total number of payments?”

**Suggested replacement:** “What is the total number of payments that I will have to make?”

**Question 10:**

**Original:** “What is the final payment amount, including any balloon payments, and due date?”

**Suggested replacement:** “What is the amount of the last payment? Is it a regular monthly payment, or is it larger than a regular monthly payment? What is the due date for the last payment?”

**Question 11:**

**Original:** “What is the final total amount to be paid over the life of the agreement, including all financing costs? (insert this total into the field on page one of this document)”

**Suggested replacement:** “What is the total amount of payments I will make, including all financing costs, over the entire life of the agreement?”

**Question 12:**

**Original:** “What property tax assessments, liens, and/or other obligations will be entered against my property as a result of the financing agreement? Will it impact my existing mortgage and/or tax payments and/or affect my future ability to sell my property?”

**Suggested replacement:** “As part of this financing, will the loan attach to my home, so that it affects the amount of equity that I have in my home? Will my property tax payments increase as a result of this financing? Will my existing mortgage be affected by this financing? Will the financing affect my ability to sell my property in the future?”

- *While we believe this version of Question 12 is an improvement, we remain concerned that these open-ended questions will lead to incomplete, unhelpful or even deceptive responses, depending upon the contractor. Perhaps they could be combined with some check box alternatives, such as:*

- As part of this financing, will the loan attach to my home, so that it impacts the amount of equity that I have in my home?  YES  NO
  - If yes, what type of lien will be put on my home?
    - MORTGAGE or DEED OF TRUST
    - TAX ASSESSMENT LIEN
    - OTHER: \_\_\_\_\_
  - Will this financing increase my property tax payments or the escrow or impound payment on my existing mortgage?  YES  NO
  - How may this financing affect my ability to sell my home or refinance my mortgage in the future?
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### **Section 3: Transferability**

#### **Question 4:**

**Original:** “(If applicable) If I have a POWER PURCHASE AGREEMENT, do I have the option to purchase the system or prepay some or all of the balance on the POWER PURCHASE AGREEMENT as part of prior to the transfer?”

**Suggested replacement:** “(If applicable) If I have a POWER PURCHASE AGREEMENT, do I have the option to purchase the system or prepay some or all of the balance on the POWER PURCHASE AGREEMENT before the transfer?”

#### **Question 6:**

**Original:** “Identify the page(s) and paragraph(s) of the contract provisions that address transferability information”

**Suggested replacement:** “Identify the page(s) and paragraph(s) of the contract that tell me whether or not I can transfer the system to a buyer of my home, or move the system to a new home that I buy.”

### **Question 7:**

“Identify the page(s) and paragraph(s) of the contract that describe the warranty for the System, and tell me whether or not I can transfer the warranty to a buyer of my home.”

### **Section 4: Installation**

Section 4 appears intended to provide disclosure of how the seller determined the appropriate number of solar panels for the System. This information is important because some homeowners have been sold systems that provide either too much capacity or not enough, depending upon their estimated energy consumption. Particularly in California, the proper size for a rooftop system can vary considerably depending upon where the home is located (coastal or inland, etc.) and the corresponding need for air conditioning or heating. However, the questions in this section are too open-ended and simply ask the seller to fill in the “calculations used.”

- The seller should be required to disclose how the number of panels was determined based on the assumptions specific to the homeowner and property (potential shading, roof location, etc.), including the homeowner’s estimated energy usage, and whether this usage estimate was based on the homeowner’s actual historical usage or a general estimate based on the location and size of the home.
- Under the question about the size of system, add new questions:
  - “c. How much energy production is expected to be lost annually due to natural aging of the System: \_\_\_\_\_%”
  - “d. How much production is expected to be lost due to shading? \_\_\_\_\_%”

### **Section 5: Costs & Savings**

#### **Questions 1 and 2:**

- **Comment:** We recommend that Question 1 be removed. It appears that Question 2 is the same question, with proper formatting and greater clarity.

#### **Question/Note 4:**

**Original:** “NOTE: You may not be eligible for all incentives available in your area. Consult a tax professional or attorney for further information.”

**Suggested replacement:** “NOTE: You may not be eligible for all incentives available in your area. Consult a tax professional or attorney for further information. You may want to do this prior to signing the contract so that you can be sure you are actually eligible for any incentives, credits or rebates discussed by the sales representative.”

**Questions 6-8:** *Are these questions referencing property taxes when they say “taxes” or some other form of taxes? If property taxes, we suggest rephrasing as follows:*

**Question 6:**

**Original:** “Total of all my monthly payments and estimated taxes over the course of the lease: \$ \_\_\_\_\_”

**Suggested replacement:** “Total of all my monthly payments related to my home, including mortgages, home equity lines of credit, second mortgages, homeowners’ association dues, homeowners’ insurance, property taxes, and other monthly or annual payments:”

**Question 11:**

**Original:** “ I understand that if my contract is subject to a “lease escalator” this may affect the amount of my future monthly payments.”

**Comment:** *We recommend including a definition of “lease escalator” so that the average homeowner understands what the term means.*

*After Question 13 (“I have a fixed monthly payment PPA. My monthly payment ....”), add a new Question 14, as follows:*

**Question 14:**

“Does the payment increase after the first year? How much does it increase?”

**Question 16:**

**Original:** “List any additional fees (one-time or recurring) associated with the installation or operation of this solar energy system (e.g., system maintenance, administrative, insurance, permitting, inspection, electrical system upgrades, or other fees).”

**Suggested Replacement:** “List any additional fees (one-time or recurring) associated with the installation or operation of this solar energy system (e.g., turn-on charge, Internet monitoring, system maintenance, administrative, insurance, permitting, inspection, electrical system upgrades, system removal, or other charges and fees).”

**Comment:** We suggest using a table format for the answer, instead of open-ended blanks, and adding a heading to create a separate section:

- ADDITIONAL FEES:

What the Fee is For	Amount of Fee	When Fee is Payable

Turn-on charge and Internet monitoring fees should be added as examples since they are specifically referenced in AB 1070.

In addition, Question 16 should be put in a separate category with its own heading: “Additional Fees,” as shown above.

We believe the table format is preferable to open-ended questions. We might also suggest as another alternative that there be specific questions for the more common fees, with some explanation, such as:

- Late Charge: If a payment is more than \_\_\_\_ days late, you will be charged \$\_\_\_\_\_
  - Automated Clearing House (ACH) Fee: If you pay with an automatic transfer from your bank account, you will be charged a fee; for each payment, the fee is \$\_\_\_\_\_
  - Returned Checks: If any check is returned or refused by your bank, you will be charged \$\_\_\_\_\_
  - System Turn-On Charge: \$\_\_\_\_\_
  - Estimated System Removal Fee: If the System is removed at your request or upon your default, you may be charged: \$\_\_\_\_\_
  - Maintenance Fee: \$\_\_\_\_\_
  - Insurance Fee: \$\_\_\_\_\_
  - UCC Notice Removal and Re-filing Fee: If you refinance your mortgage, you may have to pay \$\_\_\_\_\_ as a re-filing fee.
  - Non-Connection to Internet: If you do not maintain a high-speed internet connection, you will be charged a monthly fee of \$\_\_\_\_\_ and/or your monthly payments may be based upon estimates.
  - Other Fees/Charges:
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Finally, because the lien disclosure in Section 2 does not apply to leases and PPAs, there should be some disclosure of whether the seller intends to file a UCC-1. Most consumers won't understand what this is but it may be good to disclose since it could be an issue for them when they sell or refinance, since they may need to get a release of the fixture filing. Here is a possible disclosure:

“Seller or Lessor WILL  WILL NOT  file a fixture filing or UCC-1 Financing Statement with the county clerk in your home's real property records office.

“The UCC-1 is a public filing providing notice that the Seller or Lessor owns the System. You may need to get a release of the UCC-1 from the Seller or Lessor if you sell or refinance your home.”

In addition: We are not sure if it should be included in this Section 5, but there should be a disclosure for a lease or PPA as to whether the seller or lessor is maintaining insurance on the system, such as:

Seller or lessor will not insure for any loss or damage to the System.

Seller or lessor will insure System for any loss or damage, except under the following circumstances:

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Our principal issue with Section 5 is that it does not provide any disclosure of estimated electric utility bill savings, despite the caption and the explicit requirement in AB 1070. We presume the CSLB prepared the draft form without this disclosure because the Board is waiting for the Public Utilities Commission to finalize the “standardized inputs and assumptions.” Since AB 1070 gives the PUC until July 1, 2019 to complete that work, we urge the CSLB to include in the interim some disclosure of potential savings on this form. Also, it is not clear to us how the “standardized inputs and assumptions” will be incorporated into the solar disclosure form. It would be helpful for the CSLB to provide a mark-up of what they have planned to satisfy this requirement in AB 1070.

In closing: CLICC greatly appreciates the time spent in developing the draft disclosure form, and we look forward to working together with the CSLB on improving the form and otherwise collaborating to address the urgent issues that we see in our practice assisting low-income consumers.

Many thanks,

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