

December 11, 2017

Council of State Governments (CSG)
Energy and Environment Committee
Intergovernmental Affairs Committee

Re: CSG Resolution Supporting State Polices to Advance Residential Property Assessed
Clean Energy (PACE) Consumer Protection Policies

Dear Committee Members:

The undersigned organizations urge the Council of State Governments (CSG) to refrain from approving the proposed resolution on residential Property Assessed Clean Energy (PACE). The resolution provides an unvarnished endorsement of PACE programs and encourages states to adopt consumer protections and regulation for PACE loans consistent with those enacted by California earlier this year. As described below, the new California law does little to address the long-standing and serious problems posed by the PACE program.

States and local governments have adopted PACE programs in a well-intentioned effort to save energy, protect the environment and reduce homeowner energy costs. However, the residential PACE program has resulted in numerous problems for both consumers and the housing industry. While local governments authorize PACE programs, the loans are promoted on the front lines by private program administrators and home improvement contractors who often sell unnecessary and unwanted home improvements, at times with little connection to deep energy savings. The loans are ultimately funded by Wall Street investors, who receive a high rate of return while holding a safe senior lien position that makes them insensitive to the homeowner's ability to repay.

The new California law should not be a model for other states as it fails to adopt proven consumer protection standards. The Dodd-Frank amendments to the Truth in Lending Act (TILA) established ability-to-repay rules to ensure that consumers are offered mortgage loans that are affordable, based on verified income, and are suitable to the consumer's credit circumstances. Contrary to these accepted underwriting standards, the California law permits a program administrator to first commit a consumer to a contract to repay a PACE loan and only afterwards to determine whether the consumer has an ability to repay the loan. The California law (AB 1284) provides vague standards for ensuring that a homeowner can afford a PACE loan and that income is verified. It also creates an overly broad "emergency" exception that permits many PACE loans to be made based on unverified, stated income. The CSG resolution would encourage states to adopt provisions such as these that will not protect consumers or stop unaffordable PACE loans from being made. PACE loans are mortgages that put a home at risk and should be required to follow the same TILA consumer protections required of other mortgage products, subject only to limited adjustments that recognize the structure of PACE loans being payable as a tax assessment.

Unlike borrowers who receive “Know Before You Owe” disclosures days before closing on a home mortgage, California law does not require that PACE borrowers receive advance disclosure of critical loan terms. Instead, homeowners are often pressured by PACE contractors to sign contracts on the spot before getting full disclosure of the loan terms and without having a waiting period to think about it. Many PACE loan contracts are signed electronically on mobile tablets brought by contractors in door-to-door visits. It is not clear when, if ever, consumers receive paper copies of the loan documents, or if they even see any electronic versions before documents are “signed.”

Here are two examples of PACE loan abuses:

- An 84-year old with dementia and health problems agreed to pay over \$45,000 for home improvements, though her only source of income is Social Security, amounting to less than \$1,000 a month. After a four-hour sales pitch, the home improvement salesperson convinced her to sign four documents, which he represented were estimates but which the contractor later asserted were binding contracts. She purportedly agreed to PACE financing for 19 vinyl windows at \$805 each, stucco and wood exterior work for \$27,650, and a patio cover for \$2,250. The work was done shoddily, her energy bills did not decrease, but her tax bill increased exponentially. The annual repayment amount comprises half of her income. The total repayment amount, including fees and interest, was \$109,000. The PACE documents were signed electronically, and the homeowner did not receive a copy of the finance agreement until a relative intervened several weeks later. She could not afford the payments and filed suit to prevent foreclosure.
- The daughter of an elderly woman with cognitive impairment and dementia attempted to help her mother move to assisted living. In taking over her mother’s financial affairs, including the sale of her house, the daughter learned that she had been taken advantage of financially. The realtor handling the sale discovered in a title search that there were two property tax liens, one under HERO (\$22,000) and another PACE lien (\$49,000) by a different PACE provider. The \$22,000 HERO assessment was apparent in the property tax records and also in her mother’s papers, but nothing could be found on the \$49,000 PACE lien. Because the PACE payments don’t start until the following year, the \$49,000 assessment was not listed in the property tax records and was not discovered until the title/escrow process. The buyer was willing to assume the smaller HERO assessment, but not the larger \$49K PACE assessment. The mother was forced to pay off the \$49,000 out of the sale proceeds -- money that was to pay for nearly a year of her care in the assisted living facility. The daughter has been unable to get any receipts or financing paperwork from the solar panel installer. They never completed the interconnect agreement with the Department of Water and Power, so the solar panels aren’t even working. The daughter has also questioned why her mother qualified for the loan, as she clearly could not afford the payments on her Social Security income. The daughter stated: “This is such a bad deal, all the way around. I’m sure my mother didn’t understand what she was getting herself into”

We encourage you to review other [consumer stories](#) about PACE in California compiled by the National Consumer Law Center.¹ Although program administrators claim they have addressed contractor problems, advocates continue to receive reports of contractors using false or misleading representations to lead homeowners to believe that PACE is a free government program, that they will receive significant tax breaks or rebates, or that the loans will pay for themselves. Homeowners continue to complain about shoddy or incomplete work and damage to their homes by contractors. Seniors living on fixed incomes have seen their mortgage and tax payments skyrocket. Even though program administrators have implemented confirmation calls, many homeowners still do not understand that the loans will result in a tax lien, that the energy savings will not cover the loan payments, or that the homeowner may not be eligible for promised tax rebates.

A common selling point promoted by PACE providers is that energy efficient upgrades will reduce the homeowners' utility bill in an amount sufficient to offset the cost of the improvements. However, PACE loans have often been used for work like expensive "cool coat" paint and other work that is unlikely to produce significant energy savings. Despite this concern, energy audits are not required and there is no accountability for claims of energy savings or use of the PACE program for bait-and-switch projects that save little to no energy. Expensive PACE loans have been provided to lower income households who may be eligible for free or lower cost home energy improvements through the federal Weatherization program or other similar state and local programs.

Another challenge to PACE borrowers, when their assessment is not being paid through a mortgage escrow account, is that state tax laws generally prohibit assessments to be paid in monthly installments. Instead, assessments are paid quarterly, bi-annually or annually. Partial payments are not accepted and are returned to homeowners by the tax collector. PACE borrowers who have not adequately budgeted for this expense and are unable to come up with lump-sum assessment payments will face default, penalties, additional interest charges, and a possible tax sale or foreclosure. PACE programs do not offer loss mitigation assistance. Although PACE proponents often note that the total PACE assessment does not accelerate upon default, this does not protect homeowners from foreclosure as the tax sale laws in most states require that the property or tax lien be sold whenever tax payments, including an annual assessment, go unpaid for a brief, specified period. PACE loans can also make it difficult to refinance the regular mortgage or sell the home. The senior status of PACE liens can endanger the original mortgage holder's lien position. None of these concerns are addressed by the California law.

We urge you to withdraw the proposed resolution and instead adopt one that supports providing borrowers federal Truth-in-Lending and other Consumer Financial Protection Bureau protections. We also encourage support for the bipartisan and bicameral legislation currently before Congress. Such a resolution also should call on states to support state and municipal rules that would require PACE obligations to comply with the Federal Trade Commission's holder rule and be recorded in proper lien priority, subordinate to all prior-recorded mortgages.

¹ See also <https://www.nclc.org/issues/pace-loans.html>

Sincerely,

Consumer Action
Consumer Federation of America
National Consumer Law Center (on behalf of its low-income clients)
National Fair Housing Alliance
National Housing Law Project

Bet Tzedek Legal Services (California)
East Bay Community Law Center (California)
Georgia Watch
Housing and Economic Rights Advocates (California)
Public Law Center (California)
Public Counsel (California)
The Public Utility Law Project of New York
TURN - The Utility Reform Network (California)