



December 6, 2016

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Dear Sarah,

Upon request of the Maryland General Assembly with the passage of HB 387 during the 2016 session, the Maryland Clean Energy Center has completed the **"CLEAN ENERGY LOAN PROGRAM: Residential Property Study Report"**. As are providing you and members of the House Economic Matters Committee with a copy of the study which examined the opportunity to enable Residential Property Assessed Clean Energy Financing Programs (RPACE) for implementation in Maryland, and investigated potential program design models.

MCEC wants to extend our sincere appreciation to the members of the stakeholder workgroup engaged in the study process, either by legislative mandate or not, who contributed substantial time and thought toward the effort. These include:

- Kathleen Murphy, Mindy Lehman, Alex Choi and Bob Enten representing the Maryland Bankers Association
- Gabe Maser, Michael Yaki and Jewel James; Renovate America
- CJ DeSantis; CounterPointe Energy Solutions
- Mark Posner; Maryland Sierra Club
- John Fiastro; Maryland Energy Administration
- Michael Sanderson and Barbara Zektick; Maryland Association of Counties
- Amy Samman, Michelle Vigen, and David Crow; Montgomery County Government
- Michael Giangrandi; Heating and Air Conditioning Contractors of Maryland and MD Alliance of Energy Contractors
- Brian Toll; Ecobeco
- Susan Mitchell; Maryland Realtors Association
- James McGarry; Chesapeake Climate Action Network
- Meredith Donoho; Rural Maryland Council
- David Gabrielson; PACENation
- Jonas Jacobson; Perry, White, Ross & Jacobson, LLC
- Cliff Stanton; Renew Financial

Should you require additional information or wish to discuss the study, please contact me directly via email at [ikm@mdcleanenergy.org](mailto:ikm@mdcleanenergy.org) or phone our office at 443-949-8505.

Best regards,

I. Katherine Magruder  
Executive Director

CLEAN ENERGY LOAN PROGRAM

# Residential Property

## STUDY REPORT



Prepared upon request of the Maryland General Assembly by



December 1, 2016

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Authored by I. Katherine Magruder, Executive Director & Casey Neal, Administrative Manager

## EXECUTIVE SUMMARY

*This study was executed in consultation with representatives of specified stakeholder interests and organizations by mandate of the Maryland General Assembly per HB 387, which was passed during the 2016 session. This report reflects the findings, conclusions, and recommendations solely of the Maryland Clean Energy Center (MCEC). [Appendix i: HB 387: Clean Energy Loan Program- Residential Property- Study](#)*

### **WHAT IS PACE and why does it matter in efforts to help consumers with energy cost and conservation measures?**

Residential Property Assessed Clean Energy Finance (RPACE) is a financing tool that may be enabled to facilitate clean energy and conservation measures. This lending construct relies on the idea that those measures are a public benefit, so that the related debt functions NOT as a LOAN, but can be financed in the form of a voluntary tax ASSESSMENT with an associated lien on a property owner's tax bill. Not all stakeholders agree with this concept. Regulatory policy is necessary to frame program design, implementation, management and reporting for an RPACE program to be implemented in Maryland.

For the purposes of this study, stakeholder opinion on the viability of RPACE as a financing model varied substantially. Bankers and realtors were opposed to any program pointing to the fact that at the present time the FHFA will not purchase loans with PACE liens in super-priority status. RPACE program administrators argue this is a market issue addressed through disclosures and post-funding property owner support, and is in no way a prohibition on implementing PACE.

### **STUDY PROCESS, STAKEHOLDERS: TASK FORCE MEMBERS & PARTICIPANTS**

In order to effectively execute the required study, MCEC formed and convened a work group that met four times between June and October of 2016. Although residential property owners are the primary stakeholders relative to the potential impacts of implementing related Residential PACE (RPACE) financing policy and programs, no individual consumer advocate was identified among the mandated stakeholders to speak specifically from that perspective. This report was drafted with the input provided from work group members during and after the aforementioned meetings. [Appendix ii: "MCEC RPACE Study Work Group Participants List"](#)

Various related research materials were shared, considered, and reviewed during the process. Involved stakeholders assessed the need and opportunity for development of residential PACE financing to be authorized and supported programmatically in Maryland; raised related questions, concerns and considerations; and examined the existing program models working in other states along with elements of potential program models.

### **NEED and OPPORTUNITY to implement RPACE lending for Maryland Property Owners**

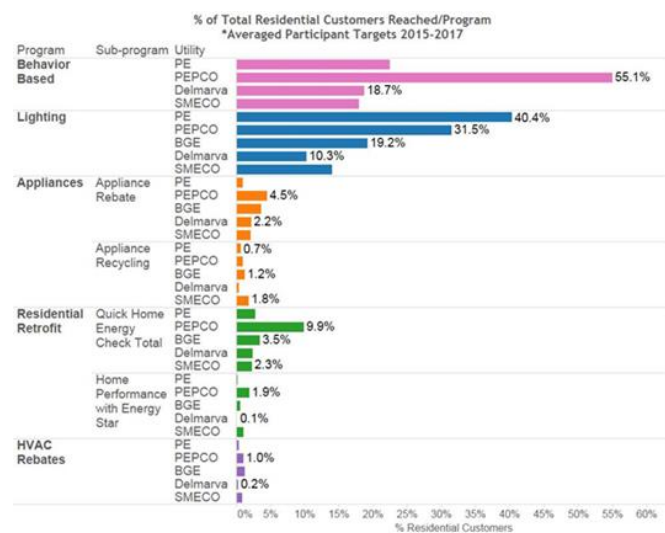
MCEC believes that achieving state energy and conservation policy goals is a driving factor to be considered in efforts to implement an RPACE financing mechanism. While some incentive and financing programs currently exist in Maryland that have potential to help residential consumers make efficiency improvements to achieve those goals, there is still a need to provide financing solutions to assist the market sector.

With regard to implementing energy improvements, in a 2015–2017 EmPOWER Maryland filing to the Maryland Public Service Commission (PSC) in September 2014, the Maryland Energy Administration calls for

additional efforts to advance financing solutions for residential consumers. “MEA has long advocated for the use of EmPOWER funds to facilitate access to affordable capital for residential and non-residential utility customers. The Commission offers its opinion on the importance of affordable and accessible financing in Order No. 84569 in December, 2011, when it stated that “[t]he lack of convenient, accessible financing at favorable rates is a missing link in all of the Companies’ EmPOWER programs.” Utilities have made significant progress since the Commission issued Order No. 84569, including the implementation by BGE and Pepco of on-bill financing programs for small commercial customers. Despite effort and good intentions, however, equal progress has yet to be made on program development for the benefit of residential customers.”<sup>1</sup>

In testimony filed with the PSC in October 2014 with regard to EmPOWER Maryland 2015-2017 Proposed Plans, the Office of People’s Council cited results from a study commissioned with the Vermont Energy Investment Corporation (VEIC) which show in Q1 and Q2 of 2014 half of the customers who participated in the Quick Home Energy Check-Up (QHEC) Program received recommendations for significant measures, such as HVAC and retrofits for which financing would be helpful. However, only a small percentage of those same consumers move to make the improvements that would result in deeper savings and access to financing would increase their participation. Quoting the report:

“Lack of access to financing continues to be a significant barrier to some residential customers seeking to make more substantial energy efficiency upgrades. Overall, the EmPOWER programs are projecting high levels of market penetration during the 2015-2017 period. However, the utilities have been far more successful with the programs delivering shallow savings to more customers, such as Behavior, Lighting, and QHEC, than with the programs delivering deeper savings to fewer customers, such as HPwES and HVAC. Figure 12 shows the projected market penetration for each program by utility, as measured by the average percentage of the utility’s residential customers participating in a given program each year.”<sup>2</sup>



The PSC held hearings on February 12 and 13, 2015 to consider two topics: post 2015 energy efficiency goals and future cost-effectiveness screening methodologies; and accepted testimony from stakeholders in regard to the EmPOWER Maryland Energy Efficiency Act of 2008; Cases No. 9153, 9154, 9155, 9156, 9175 & 9362.

EXHIBIT A shows the projected market penetration for each program by utility, as measured by the average percentage of the utility’s residential customers participating in a given program each year.<sup>2</sup>

1 Maryland Energy Administration filed, on September 02, 2014, Policy and program Recommendations-EmPOWER 2015-2015. Case Nos. 9153-9157; Page 29

2 Vermont Energy Investment Corporation; Maryland Office of People’s Counsel: “Empower Maryland 2015-2017 Proposed Plans, Written Comments”

Following those proceedings, in April 2016, the PSC issued a report entitled: *“The EmPOWER Maryland Energy Efficiency Act STANDARD REPORT OF 2016 With Data for Compliance Year 2015 In compliance with Section 7-211 of the Public Utilities Article, Annotated Code of Maryland”*. The report provides data showing that many of the utilities had met or exceeded the 2015 goals for reductions in residential energy consumption, but in Order No. 87082 issued on July 16, 2015, the Commission found:

*“As we reach the end of the prescribed 2015 energy efficiency and demand reduction goals, we find that enormous potential still exists throughout the State for continued cost-effective investment in energy efficiency as a least-cost resource.”<sup>3</sup>*

As part of that order, an increase in the EmPOWER energy efficiency and conservation goal was also given as a Commission directive with the intent “on a trajectory to achieve an annual incremental gross energy savings of 2.0% percent per year using a ramp-up rate of 0.2% per year.”<sup>3</sup> This increased goal again drives potential market demand for financing that might allow homeowners to make more impactful improvements that they may not make without the availability of related financial resources.

### **STAKEHOLDER Perspective**

During the MCEC study process, several stakeholders, especially energy improvement contractors, expressed interest in and support for the adoption of RPACE financing as a way to foster business development and provide consumers with cost saving solutions. They cited the need for velocity of capital and consumer wait-time typically experienced with conventional sources of funding. Between the times that a customer wants or needs a contractor to execute work and when the contractor can be reimbursed or paid for upfront investment in materials and labor is largely viewed as an impediment to demand for services. Contractors report that financing decisions are often made at point of sale, and do not always provide the most advantageous circumstances for homeowners.

Representatives from the Heating & Air Conditioning Contractors of Maryland and Efficiency First, speaking for energy efficiency improvement contractors, advised that a real barrier for residential consumers to make meaningful, and often crisis driven decisions about energy saving measures is related to access to capital. They opined that removing this barrier is one way to move toward achieving state energy goals, and there are model RPACE programs functioning in other states from which Maryland can learn in order to replicate best practices in implementing a similar program model.

Brian Toll, President of ecobeco and representing members of Efficiency First, voiced support for RPACE because it addresses certain challenges consumers face in financing energy improvement since the lifetime of a typical improvement asset often doesn’t match the terms of typical of loan products. Contractors support implementation of RPACE financing programs to allow consumers access to affordable capital at longer terms to drive market adoption of Energy Efficiency (EE) and Renewable Energy (RE) measures.

Gabe Maser with Renovate America reported that one out of seven homeowners will replace some sort of energy-consuming fixture in their home annually, and expressed the concern that HVACs and similar systems are unlikely to meet the Department of Energy’s efficiency standards.

Michael Giangrandi, President of the Maryland Alliance of Energy Contractors and representative of the

<sup>3</sup> Maryland Public Service Commission; Order. No. 87082; July 16, 2015

Heating & Air Conditioning Contractors of Maryland shared his experience with FICO credit scores existing as a current barrier for access to capital with some consumers. He further noted that since a certain credit score is *not* required in the underwriting in the RPACE model, implementation could help remove this barrier and advantageously open up a broader customer base for those contractors.

Environmental advocates from the Chesapeake Climate Action Network (CCAN) and the Sierra Club view RPACE financing as a way to reduce the environmental impacts of less clean energy generation and consumption.

### **RPACE May ADDRESS CHALLENGES**

MCEC believes that implementation of an RPACE financing program or programs in Maryland may help address certain challenges and could present an opportunity to better address related energy goals, create jobs for contractors, and ultimately assist consumers to reduce energy costs.

MCEC comparatively evaluated certain consumer interests in lending program characteristics related to RPACE, as well as other traditional sources of capital that Maryland homeowners might utilize for energy improvements. The study found several key advantages and disadvantages with each model that a consumer would want to consider carefully before choosing a certain financing option. The work group at large expressed concerns about how an RPACE program might address differing levels of financial literacy in consumer interface.

### **QUESTIONS, CONCERNS and CONSIDERATIONS**

The study process reviewed and considered RPACE program models currently functioning in other states, as well as reports about the impact on consumers that have utilized them. California programs have been in existence the longest; Florida following with a total of approximately 3,000 loans.

PACE financing becomes a lien on the homeowner property and is paid as part of the tax bill. The position of the lien in the event of default is a significant concern to mortgage banking interests, especially since in most scenarios the local government will have the highest priority right to be repaid in the event of a default and ultimate sale of the property.

Questions and concerns were raised about how various consumer protections would be factored into the application and project management process, along with concerns about how defaults would be handled, as nonpayment could trigger county tax sale and subsequent foreclosure. The group also questioned how refinancing or resale of a property might be impacted by an RPACE lien, and the topic was discussed at length in the work sessions. Existing clean energy loan providers indicate that an assessment may transfer to a new owner at the time of sale or refinancing, and point to recently released guidance from FHA/VA which outlines how properties with PACE assessments can be purchased and refinanced with an FHA/VA insured mortgage. Bankers and realtors remain concerned that if the seller must pay off the lien, it could prohibit a sale.

The Maryland Bankers Association (MBA), the Maryland Land Title Association (MTLA) and the Maryland Realtors Association (MRA) expressed concern about the potential impact of RPACE liens on homebuyers and sellers seeking to finance or refinance mortgages. They specifically highlighted restrictions on selling mortgages with RPACE liens on the secondary market as a primary concern and reason for objection to moving environment in the marketplace were also raised in related deliberations.

On July 19, 2016, the Federal Housing Administration (FHA) in conjunction with the Veterans Administration (VA) offered guidance on how properties with PACE assessments can be purchased and refinanced with FHA mortgage insurance.<sup>3</sup> FHA now allows residential PACE assessments to interact with single family home mortgages secured by the FHA in the event of purchases, refinances, and loan modifications. In addition, the guidance recognized that PACE should be treated as any other property tax assessment, and not as a conventional loan product. Despite this most recent guidance stakeholders from the mortgage banking industry still expressed concern about the potential inability for mortgage lenders to sell a mortgage on the secondary market and believe it is still a significant issue.

Prior to the release of the aforementioned guidance from the FHA and VA, in testimony before California's legislature in June 2016 Alfred M. Pollard, the Federal Housing Finance Agency (FHFA) General Counsel, (FHFA regulates Fannie Mae, Freddie MAC and the Federal Home Loan Banks) took issue with the fact that these programs look principally to the value of property to support a loan, rather than the ability of a homeowner to repay. "Ability to repay" is now required at both the federal and state level in order to prevent the kind of lending that contributed to the past housing financial crisis.

Pollard also pointed out that PACE programs charge fees amounting to as much as 10% of the loan, and in his opinion offer narrow consumer protections. Quoting Mr. Pollard:

*"In issuing this statement, FHFA wants to make clear to homeowners, lenders, other financial institutions, state officials, and the public that Fannie Mae and Freddie Mac's policies prohibit the purchase of a mortgage where the property has a first-lien PACE loan attached to it. This restriction has two potential implications for borrowers. First, a homeowner with a first-lien PACE loan cannot refinance their existing mortgage with a Fannie Mae or Freddie Mac mortgage. Second, anyone wanting to buy a home that already has a first-lien PACE loan cannot use a Fannie Mae or Freddie Mac loan for the purchase. These restrictions may reduce the marketability of the house or require the homeowner to pay off the PACE loan before selling the house."*<sup>4</sup>

The FHFA continues to hold this position. On the other hand, PACE program providers argue that PACE has continued to thrive despite the position that FHFA originally expressed in 2010. In addition, the providers state that the PACE industry currently offers a wide variety of consumer safeguards which often exceed those offered in conventional financing solutions. Consumer safeguards, offered by providers such as Renovate America, include the confirmation of financing terms in a live, recorded phone call before the homeowner can access and sign their financing documents. Homeowners are provided a financing summary modeled after the Consumer Financial Protection Bureau's "Know Before You Owe" disclosure form; contractors are not paid until the job is completed to the homeowner's satisfaction; contractors must be licensed or verified, bonded, and insured; installed products must meet government energy and water efficiency ratings; and homeowners are provided with post-funding consumer supports include dispute resolution and investigative services on everything from workmanship to marketing violations. Renovate America also points to a recent peer-reviewed study showing that PACE improvements increase the property value of homes and, in their experience, increase the marketability of properties because of the presence of energy-efficient improvements.

<sup>4</sup> <http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-the-Federal-Housing-Finance-Agency-on-Certain-Super-Priority-Liens.aspx>



program construct, this entity also oversees and implements contractor qualification requirements, approvals and registration as well as reporting results on completed projects.

For Maryland, MCEC is appropriately enabled by statute to serve in this capacity but currently lacks resource capacity to assume such responsibility. Individual counties and/or the City of Baltimore could build and implement an RPACE program at the necessary scale to attract the significant investment. These entities may have the resource capacity to do so, but they would not necessarily serve a statewide market. Although a certain public investment if require in the pre-development phase of program implementation, once a municipal or state-wide program is up and running, fees from transactions have the potential to allow the COA itself to cover its own administrative costs.

On the federal level, the US Department of Energy (DOE) is committed to supporting the expansion of well-designed and effective PACE programs. In October 2016, the agency released draft best practice guidance for management and consumer protection.*(See page 23)* MCEC recommends that those suggested elements be considered and potentially required by regulation to be incorporated into any potential program(s) established in Maryland.

## **SUMMARY RECOMMENDATIONS**

**MCEC believes there is great opportunity for RPACE in Maryland to succeed in overcoming barriers to energy efficiency and renewable energy adoption currently not being addressed by existing efficiency programs and financing options. The MCEC study concludes that there is a need to facilitate access to capital which may enable residential property owners to implement energy and conservation measures on their properties; and that RPACE financing could potentially provide a workable solution. However, more work needs to be done on program development for the Maryland General Assembly to pass related enabling legislation.**

Some work group members opposed RPACE program specifications, but others support RPACE. Not all work group members agree that the time is right to advance RPACE legislation, but the Maryland Clean Energy Center believes that the policy has merit and that the legislature should consider it in a future session.

In regard to program implementation and oversight, MCEC is statutorily enabled to provide central oversight serving as a joint powers authority to enable program implementation on a statewide basis. So too could counties or regional authorities that wish to issue related bonds could implement legal entities to provide oversight for implementation at a local scale, but **certain decisions and direction related to program design and best practices for implementation and oversight need to be further developed for adoption by the state in future proposed enabling policies.**

**A source of funding to cover initial costs associated with creation, management, and administration of a centralized state, regional, or local program oversight entity must also be identified before RPACE lending constructs are put into place.**

**The work group did not reach consensus on adoption of related policy and implementation of RPACE lending program/s in Maryland.** At the time of this report MCEC finds there is split opinion by key stakeholder audiences on whether the absence of FHFA guidelines are a major hurdle for successful adoption of RPACE financing. Should those guidelines be revised that hurdle may be removed.

## TASK FORCE CHARGE & STUDY PROCESS

### **STATUTE: HB 387 Clean Energy Loan Program – Residential Property –Study**

The following summarizes the charge for the study as quoted from the statute, and outlines the mandated consultation with specific stakeholder interests:

*“...requiring the Maryland Clean Energy Center to conduct a study to determine certain design and implementation strategies for a residential clean energy loan program; requiring the study to include consideration of certain matters; requiring the Center to consult with certain persons in conducting the study; requiring the Center to report certain findings and recommendations to the General Assembly on or before a certain date; and generally relating to the collection of loan payments for residential property improved through loans for improvements to residential property under the Clean Energy Loan Program.”*

*“(a) (1) The Maryland Clean Energy Center shall conduct a study to determine optimal design and implementation strategies for a residential clean energy loan program in the State.*

*(2) The study required under this subsection shall include consideration of whether the strategies will work advantageously with loans made by private lenders for residential energy efficiency and renewable energy projects.*

*(3) In conducting the study required under this subsection, the Center shall consult with:*

- (i) the Maryland Energy Administration;*
- (ii) the Maryland Association of Counties;*
- (iii) the Maryland Bankers’ Association;*
- (iv) clean energy loan providers;*
- (v) the Chesapeake Climate Action Network; and*
- (vi) the Sierra Club*

*(b) On or before October 1, 2016, the Maryland Clean Energy Center shall report 7 to the General Assembly, in accordance with § 2–1246 of the State Government Article, the 8 findings of the study required under subsection (a) of this section and any recommended 9 policy actions to implement a residential clean energy loan program.”*

### **STUDY PROCESS**

On June 9, 2016 during an initial conference call, the work group reviewed the intent for the study. They considered the problem or challenge RPACE addresses, and looked to identify any agreed upon outcomes of stakeholders. They also discussed whether or not the policy that was proposed adequately helps achieve desired outcomes.

During the first in-person work session on June 23, 2016 participants analyzed certain considerations and comparisons, including how RPACE programs work in other states. The main focus of this discussion was to identify which lenders and program administrators are active in the market place; what roadblocks have been experienced or are ongoing in program implementation; what related federal policy guidance is pending; and if homeowner interest has been verified.

During the second in-person meeting on July 19, 2016 the work group addressed specific factors and best practices in models for potential program implementation, including but not limited to:

- Program Administration
- Lien Position
- Transferability
- Survivability
- Consumer Protections
- Cost of Capital compared to the other more traditional options and sources
- Interests of Mortgage banks vs. PACE Financing lenders

At the final meeting on October 13, 2016 the work group reviewed and suggested edits to a draft study report outline, and offered guidance that led to the final report recommendations. An opportunity for the work group to review a final narrative draft report and comment was also provided before publication.

## NEED & OPPORTUNITY

In assessing the need and opportunities associated with the establishment of RPACE financing in Maryland, MCEC evaluated existing state policies driving demand for energy and emission reductions as well as challenges consumers face in obtaining convenient and affordable financing to implement energy measures, and the potential economic development benefits related to enabling business success and job retention.

### **POLICY DRIVES THE MARKET**

**Recognizing the need to proactively address potential impact of climate change and reduce harmful air and greenhouse gas emission to improve the environment. In 2016 Governor Hogan signed reauthorization of the Greenhouse Gas Reduction Act of 2016 into law, increasing the related overall target goal from 25 % by 2020 to 30% by 2040.** This policy creates added market demand for efficiency products, services, and technologies that aid in facilitating economic development through related business and job creation. Access to capital to meet that demand has been and continues to be a barrier in implementation of energy generation and savings measures for many residential consumers.

In 2008, the Maryland General Assembly enacted policy that implemented the EMPOWER Maryland Energy Efficiency Act. This policy initially required demand for electricity to be reduced by 15% by 2015. To better enable residential consumers to take part in meeting those goals, this policy put in place a systems benefit charge to be used in part for rebates and incentives in order to encourage consumer adoption of energy efficient lighting, appliances, and other measures. While this investment has successfully helped to achieve the desired results, it has not been a comprehensive source for energy project financing and there is clearly reluctance on the part of utility providers to implement on bill financing solutions.

Given that the residential sector accounts for approximately 31% of Maryland’s energy consumption<sup>1</sup>, meeting the state’s goal to reduce energy use by 15% and to move toward 20% renewable energy production will require a significant commitment to making Maryland’s homes more energy and water efficient. Instead of allocating billions in taxpayer and/or ratepayer funds to realize the state’s public policy goals, MCEC believes RPACE can help leverage private capital to meet the need.

In July 2015, the Maryland Public Service Commission (PSC) in its order #87082 established post-2015 energy efficiency goals for the state. These new energy efficiency goals are additive to the previous goals and will take

full effect beginning in 2018. The PSC electric energy efficiency goal is set at 2% of the weather normalized gross retail sales for utilities in the state. The goal for the utilities in 2016 is to achieve the forecasted savings approved in the Commission’s December order, and the utilities’ goals for 2017 are 0.2% higher as a percentage of retail sales compared to the savings forecasted in 2016. This original goal would increase by 0.2% per year until the utility reaches the annual incremental gross energy savings of 2% per year.

Along with this demand reduction goal, a Renewable Portfolio Standard (RPS) is included which calls for 20% of the energy generation supplied to Maryland consumers to be provided by renewable energy solutions by 2022. Advocates in the state are now calling to increase these two goals, which together create market demand and opportunity for the adoption of energy efficiency measures by homeowners who could benefit in both comfort and cost savings.

### CONSUMERS FACE FINANCING CHALLENGES

Every year one in six homeowners will need to upgrade or a replace an AC, furnace, and/or water heating system.<sup>5</sup> Americans change homes, on average, every five to seven years. One of the documented barriers to homeowner adoption of efficiency improvements is the reluctance to invest in a more efficient, yet possibly more expensive product when the homeowner’s future plans are uncertain. Supporters argue that RPACE provides an innovative solution to this transferability challenge by allowing outstanding payments to transfer to a future homeowner at sale.

According to the 2014 JP Morgan HVAC study, three out of four HVACs are not energy efficient.<sup>6</sup> With RPACE, this can be addressed through educating and marketing products that highlight consumer convenience and energy cost reduction.

A work group member representing Efficiency First, a national associate for the home performance industry expressed opinion RPACE is needed in the residential efficiency market. The organization holds that RPACE presents a unique solution to increase the small amount of homeowners who currently struggle to finance efficiency improvements. RPACE can offer loans with terms that match the useful lifetime of the asset— a service that current financing options do not offer. While valuable in providing some incentives to influence consumer behavior, EmPOWER Maryland rebates do not offer Marylanders access to affordable, long-term capital to continue to drive energy efficiency.

***“Renovate America’s HERO Program has now financed nearly 20,000 residential solar power installations, resulting in the creation of almost 5,000 clean-energy jobs. The figures, along with a number of new solar product offerings announced today at SPI, North America’s largest solar trade show, underscore the increasingly powerful synergies between HERO financing and rooftop solar.”***

*Appendix iii: Renovate America Press Release*

### POTENTIAL ECONOMIC DEVELOPMENT BENEFITS

Not only does RPACE present valuable financing options for homeowners, but it also has the potential to increase contractor jobs and business opportunities in the state. Energy efficiency and home improvement contractors along with the Heating & Air Conditioning Contractors of Maryland support RPACE because it has

5 National Association of Home Builders & Bank of America Home Equity. (2007, February). Study of Life Expectancy of Home Components. Retrieved from <http://stevesmallman.com/wp-content/uploads/2013/05/NAHB-Lifetimes.pdf>.

6 2014 HVAC Report: Almost Normal. (2014, March). J.P Morgan.

potential to expand their business in the residential property market sector.

Additionally, the representatives of these groups expressed their support for RPACE financing because of the slow approval process involved in some state funded home energy grant and financing programs currently targeted to serve the residential consumer.

Anecdotal information provided by the aforementioned stakeholders indicated approximately 25% of all applications submitted, through contractors from the Heating & Air Conditioning Contractors of Maryland, using the current public and public-private lending programs in Maryland are either denied or delayed.

MCEC believes that RPACE can offer a streamlined application and approval process, which would drastically decrease the time between application, approval, and capital distribution. With this streamlined process, contractors will suffer less from the delayed approval process have the opportunity to draw in more business. Not only would this streamlined approval process reap benefits to the energy economy, but it could also be a tool to draw more homeowners into the program.

## PACE MAY ADDRESS CHALLENGES

The study process examined and compared the conventional RPACE financing model to various conventional financing solutions currently available in the market place for residential consumers today; including:

- Home Equity Line of Credit (HELOC)
- Market Rate Credit
- Maryland Home Energy Loan Program
- Maryland DHCD BeSmart

Using the comparison chart provided in Exhibit B on page 16, MCEC took into account certain considerations as it would relate to the velocity of capital to address homeowner energy challenges, including:

- Rates
- Terms
- Approval turnaround timeframe for applications
- Time for contractor payment
- Accessibility limits
- Tied to FICO credit score or not
- Equity required to access financing
- Secured or unsecured debt
- Impacts on consumer debt capacity
- Restrictions on and propensity to encourage implementation of more significant energy improvement measures, and
- Implications on potential to refinance associated mortgages

Proponents argue that in practice, RPACE financing may allow consumers to more easily and rapidly obtain longer terms, better rates and more qualified contractors to implement enhanced energy improvements compared to other available financing solutions. RPACE is not tied to a consumer FICO score, so it has a broader potential to address the needs of an otherwise underserved sector of the consumer market. Turnaround time for payments to contractors upon completion of work ordered is also lessened using RPACE financing.

Disadvantageously, in the event of a default on payment consumers with a property tied to a RPACE lien or one encumbered by a HELOC secured by the property could face foreclosure. Opponents strongly believe this is not the case. Because HELOCs are almost always subordinate to prior recorded mortgages, default in the HELOC almost never results in the HELOC triggering a foreclosure. The amount due under RPACE is part of the homeowner's tax assessment and as such would be superior to other prior recorded liens. They believe a default in that case will almost always result in a foreclosure sale. *See also: [Appendix iv: How Renovate America's HERO Program Compares to Competitive Products](#)*

Similar to other conventional and available financing solutions, there are limits to the availability of capital for RPACE project financing, which varies as part of a loan to value (LTV) calculation in relation to the fair market value of the property. In California, for example, RPACE financing is capped at 15% of the fair market value of the property, and may also be limited to a certain percentage of the overall property tax to insure that annual payments do not exceed certain totals.

In regard to consumer adoption, there are challenges with existing renewable energy and energy efficiency financing programs. In evaluating the impact of the \$500 million invested in more than 40 residential and

commercial energy efficiency programs nationwide, the US DOE noted that “Programs that struggled with generating demand for loans typically had loan application processes with longer approval timeframes, higher interest rates, or complex loan eligibility requirements such as stipulations on the types of eligible measures or cost-effectiveness criteria that limited eligible measures for financing.”<sup>7</sup>

HVAC contractors in Maryland indicate that this bears out in the state as well in their experience with the BeSmart Loan program, run by the Maryland Department of Housing and Community Development. Because contractors typically cannot afford to float the cost of equipment in a typical installation, they report it takes much longer time to process an application for approval and then to get payment to the consumer and ultimately the contractor after the job is complete using this program that is acceptable to them. The MCEC Maryland Home Energy Loan Program (MHELP) typically takes 24 to 48 hours for approval and contractors are paid directly upon completion of the work upon customer approval within 24 hours.

Although, since inception, the BeSMART single-family loan program has assisted 137 households and the MHELP program has provided loans to over 3,800 residential consumers. MCEC estimates there are many thousand more residential properties that could benefit from energy and weatherization home improvements that may benefit from RPACE financing to get the job done.

As program administrators operating the California HERO Program, Renovate America states; “Contractors can also overcome working-capital constraints through HERO Project Advance. With HERO Project Advance, qualifying contractors can automatically receive an upfront advance of 30 percent of the HERO project amount. When the project is completed, the contractor receives the remaining HERO project amount less applicable interest.” *Appendix iii: Renovate America Press Release: “HERO Program a Fast-Growing Platform for Residential Solar”*

Data on how many energy efficiency loans are made through non-PACE financing vehicles offered through banks and other lenders was not obtainable for the purposes of this study.

Kathleen Murphy, President and CEO of the Maryland Bankers Association, reported

*“While our members offer HELOCs, consumer loans and other loan products that can be used for energy related needs, we are not aware of any data sources that capture specific statistics in this area. Finance companies, credit unions and third party HVAC/home improvement companies, through relationships with traditional lenders, are other sources of financing available to homeowners. We are not aware of any data available that links loan products from these providers to energy efficiency uses, as well.”*

MCEC believes there may be advantages for consumers working through an RPACE financing program to make energy improvements because they can access information and technical assistance; identify reliable and qualified contractors; and obtain access to capital for comprehensive project development and financing that would otherwise be more of a challenge.

7 Dunn, S. & Ciraulo, R. (2014). Residential Energy Efficiency Financing: Insights and Lessons Learned from the Better Buildings Neighborhood Program. Retrieved from <http://aceee.org/files/proceedings/2014/data/papers/2-114.pdf>

EXHIBIT B

COMPARING PACE TO CONVENTIONAL FINANCING MODELS					
Available Financing Solutions					
Consumer Interests	PACE	HELOC	MARKET RATE CREDIT	MHELP	BeSMART
Rate	6-8%	3-5%	14-22%	0-9.9%	4.99%
Term	Tied to the useful life of the assets, avg.5 to 25 yrs.	Avg. 10 years	Undetermined	Max 10 years	Max 10 years
Approval Time: Velocity of Capital to Provide Solutions	24 hours	Varies	Immediate	24 to 48 hrs.	7 days or more
Turnaround Time for Contractor Payment	FAST	VARIES by CONSUMER	VARIES by CONSUMER	FAST	SLOW
Accessibility Limits	Must be the property owner	Must be the property owner	N/A	Must be the property owner	Restricted to low income
Tied to FICO	No	Yes	Yes	Yes, 640 Min	Yes, 640 Min
Equity Required	Yes, 10 % min.	Yes	No	No	Yes, 50%
Impacts Consumer Debt Capacity	May	Yes	Yes	Yes	Yes
Secured or Unsecured	Yes, with Lien linked to Public Tax or Fee Collection	Yes, Tied Available Equity in Property	No	No	No
Available Capital	Varies, LTV. In CA, 15% of Fair Market Value of the property. May also be limited to a certain % of property tax to insure that annual payments do not exceed certain totals.	Varies, LTV	Varies with Personal Credit Limits	\$20,000	\$30,000
Eligible Measures	Specific to authorized measures.	N/A	N/A	Specific to authorized measures.	Specific to authorized measures.
Potential Foreclosure	Yes	No	No	No	No
Implications for Refinancing	Yes, prohibited with FHFA secondary market but allowed with FHA and VA	Yes, may impact DTE ratio	Yes, may impact FICO	Yes, may impact FICO	Yes, may impact FICO

## QUESTIONS, CONCERNS & CONSIDERATIONS

During the study process, the work group asked and addressed certain relevant questions and concerns about RPACE financing which largely fell into two categories: dealing with lien position, subordination, transferability and survivability; and the need for consumer protections.

### **LIEN POSITION, SUBORDINATION, TRANSFERABILITY & SURVIVABILITY**

- What happens if a consumer goes into default on their PACE lien?
- In the event of foreclosure, what comes ahead of the mortgage lender?
- How are current PACE programs running with the current FHFA recommendations and oversight?
- Are there Loan Loss Reserve Requirements?
- What does or could happen when a home with a PACE lien sells?
- During the home sale process, how do PACE loans impact the salability of a home?
- Are there significant instances of complications with homeowners who have tried to buy or sell a property with a PACE lien?

The position of an RPACE lien in the event of a default as well as in the event of the resale of the mortgage or sale of the property, were expressed by stakeholders as the most significant issue facing the potential adoption of RPACE financing solutions in Maryland. As part of the explanation for why this is the case the Maryland Bankers Association (MBA) provided the following:

*“The Federal Housing Finance Agency (FHFA) is an independent regulatory agency responsible for the oversight of vital components of the secondary mortgage markets—the housing government sponsored enterprises of Fannie Mae, Freddie Mac and the Federal Home Loan Bank System. Combined these entities provide more than \$5.5 trillion in funding for the U.S. mortgage markets and financial institutions.*

*Fannie Mae and Freddie Mac are essential to the U.S. housing finance market because they purchase, guarantee and securitize the vast majority of single-family mortgages.*

*Fannie Mae and Freddie Mac hold dominant positions in the housing market and if they will not purchase residential mortgage loans in a particular market (e.g., Maryland), the availability of financing, along with financing at affordable levels, is significantly adversely affected.”*

Government Sponsored Enterprises (GSE), under FHFA's conservatorship, represents a sizable segment of the mortgage origination market, but they do not represent the entire market. According to the Urban Institute, the GSEs account for 43% of the market for new mortgage originations, which means that over half of new mortgage originations are not covered by the FHFA position.

In California, PACE providers have instituted a process whereby the providers forego to the incoming mortgage their rights to foreclose on a property for non-payment of the PACE assessment as well as their rights to proceeds from a foreclosure induced by non-payment of the mortgage in order to help facilitate sale and refinance transactions.<sup>8</sup>

Renovate America indicates that combined, Fannie Mae and Freddie Mac account for a sizable yet shrinking

<sup>8</sup> [http://www.urban.org/research/publication/housing-finance-glance-monthly-chartbook-november-2016/view/full\\_report](http://www.urban.org/research/publication/housing-finance-glance-monthly-chartbook-november-2016/view/full_report)

proportion of the national mortgage market (down to 43%). As a result, the prohibition against purchasing mortgages with priority RPACE liens by Fannie Mae and Freddie Mac has not entirely precluded the ability of borrowers to sell or refinance their properties.

In addition, in order to ease friction at the point of sale or refinancing for existing customers whose lenders have indicated that they will not extend financing because of the RPACE lien, Renovate America and other RPACE providers in California instituted a contractual subordination process they subordinate their rights to foreclose on properties for non-payment of the RPACE assessment as well as their rights to proceeds from foreclosure to the first deed of trust.

While California RPACE financing program models allow for liens to be subordinated, there is some disagreement as to whether this solution is truly viable. County finance officers consulted for this study report there is no way to bifurcate or separate a one form of lien from another in the collection process or as it would relate to a tax sale. The National Consumer Law Center expressed the opinion, “Failing to pay the full escrow amount due each month on a traditional mortgage constitutes default on the loan. So, if a borrower cannot meet their full mortgage payment (including the escrow that goes toward the PACE assessment) the borrower will face foreclosure.”<sup>8</sup> Renovate America responded that the process for subordination would not require county officials to be forced to differentiate between the PACE and other tax delinquencies.

The Federal Housing Administration (FHA) and Department of Veterans Affairs (VA) made a substantial change in policy in July 2016. The agencies specifically recognized the potential for PACE to increase the accessibility and affordability of energy saving measures and instructed lenders to approve, purchase and refinance mortgage applications with PACE obligations; and allow full transferability of the PACE obligation between properties. Despite the fact that FHA and VA are approximately 23% of the market, it still opens up a substantial amount of capital to property owners. In the event of a default, only the unpaid monthly assessments precede a prior recorded mortgage while the lien remains with the property.<sup>9</sup>

## **TRANSFERABILITY**

Stakeholders from the MBA, MLTA and the Maryland Realtors Association (MRA) expressed concerns about how the application of an RPACE lien could affect the potential sale of a property; citing mortgage lending regulations and FHFA guidelines that prohibit refinancing with a super priority PACE lien attached to a property.

Despite the potential to transfer the lien, it is important for homeowners considering RPACE to understand that a prospective homebuyer may insist that the RPACE assessment be fully or partially paid off by the seller at sale, or that a mortgage lender may request payoff of the RPACE assessment at refinance or sale or as a personal preference of the buyer in not assuming the future obligation. Were it required, payoff of a RPACE assessment at sale is consistent with the treatment of other existing real estate debt at sale, such as a home equity line of credit or a second mortgage, which must also be paid off prior to transfer. As part of necessary disclosures, all stakeholders agree the potential for the requirement of payoff should be prominently disclosed to the recipient of RPACE financing prior to closing the transaction, so that participating homeowners understand the scope of the transferability benefit and can plan accordingly.

<sup>9</sup> Letter from the National Consumer Law Center to the US Department of Energy, August 18, 2016; Re: “Comments on *Best Practice Guidelines for Residential PACE Financing, Draft for Comment* (July 19, 2016)

Bankers and realtors call attention to recently published articles which indicate a lack of consumer awareness about how an RPACE lien may affect their ability to sell or refinance a home. See Appendix x: Sunline Energy Article “The Dark Side of PACE Solar Loans in California”

As applicable to a state RPACE program, FHFA’s position indicates that a mortgage lender may require a homeowner to pay off the RPACE assessment as part of a refinance or sale transaction. That possibility must be prominently disclosed to any homeowner considering RPACE financing under the PACENation standards, draft DOE guidance, and California AB2693. Renovate America, one program administrator interviewed for this study, has gone even further and now requires live recorded phone calls between the homeowner and their call center to ensure that the transferability attributes of PACE are clearly understood.

The MBA believes it is not enough to say that a consumer has an option to pay off a PACE debt, and that when there is an RPACE lien it may be difficult for a consumer to sell a home because they may not be able to obtain a mortgage loan until the lien is paid in full. They opine it puts the consumer in a position of being unable to take advantage of lower rates if they want to refinance, and unable to sell if they must realize enough cash to pay off the loan. They also believe that the increased interest rates and costs need to be emphasized. To reinforce this position, they reference an article published by Sunline Energy in July 2015. See [Appendix x: Sunline Energy Article “The Dark Side of PACE Solar Loans in California”](#)

Renovate America and other program administrators view the FHFA’s position not as a barrier to the implementation of an RPACE program, but rather an element to be considered in program implementation through strong upfront disclosures regarding the possible lender requirement of payoff at refinance or sale. Indeed, RPACE has grown remarkably in California, and was operating in Florida during which the FHFA’s position remained constant. As noted previously, just this past July, the White House through FHA and VA has come out in strong support of RPACE and provided guidance on how properties with PACE assessments can be purchased and refinanced with an FHA-insured mortgage.<sup>10</sup>

It should be noted that this is an issue both complicated and subtle in its treatment. For example, if the annual PACE charge or assessment is treated in the same manner as a property tax, the annual charge or assessment has super-priority status. However, that does not mean the entire PACE lien or obligation has super-priority status over a mortgage. Because PACE liens do not accelerate (i.e., the entire obligation does not become due if there is a default or delinquency of the annual payment) there is no financial exposure to a mortgage lender for any amount other than the annual payment or payments including interest, penalties, fees, etc. This does not change the fact that FHFA will not allow the purchase of any mortgage on a property subject to an RPACE lien. The MBA believes this is an issue that should be addressed before any legislative proposal is adopted in Maryland.

<sup>10</sup> The White House Office of the Press Secretary (2016). Fact Sheet: Obama Administration Announces Clean Energy Savings for All Americans Initiative. Retrieved from <https://www.whitehouse.gov/the-press-office/2016/07/19/fact-sheet-obama-administration-announces-clean-energy-savings-all>

## NEED FOR CONSUMER PROTECTIONS

The work group expressed concerns about consumer financial literacy, and how homeowners may not fully understand the consequences of assuming an increased financial obligation on their tax bill. Additionally, homeowners may not be able to effectively compare the cost of a PACE loan to that of more conventional financing—which is typically available at a significantly lower interest rate.

Consideration of consumer protections and underwriting

standards in relation to RPACE financing, specifically with regard to contractor performance, and concerns about the marketability and value of property encumbered with RPACE lien were also discussed. Bankers and municipal stakeholders were particularly interested in understanding disclosure requirements would be associated with RPACE program operation, and there was some discussion about the applicability of Holder in Due Course laws.

- Will Federal guidance for consumer protections be included in Md. Regulations?
- Will consumer-lending laws apply, and how does consumer FICO apply or not apply?
- Will LTV be required as a consideration in lending?
- What is the recourse for consumers if installed equipment is defective?
- Will energy audits be required?
- What licenses are required to operate?
- What requirements are imposed on contractors to participate in PACE programs?
- In regard to requirements for regulatory oversight, who are the vendors accountable to?
- How do enforcement mechanisms work?

**A borrower's ability to repay was discussed as a concern of the work group. Default management and debt acceleration concerns expressed by the county stakeholders should also be addressed. Both factors should be considered and included in RPACE program design as part of regulatory oversight for consumer protections.** The National Consumer Law Center, in the previously cited August 2016 letter, raised specific issues with regard to low income consumer protection which MCEC would also recommend be considered, and addressed in contemplating program design for Maryland.

Program administrators in other states advised Maryland to insure that statewide enabling regulations require standard consumer protections are consistent across jurisdictions. Specific US Department of Energy guidance on recommended consumer protections for inclusion in model RPACE financing programs is still pending, but the National Consumer Law Center suggests a variation of the following list be considered in implementation of RPACE programs:

- 1) Consumer mortgage protections should apply to all PACE loans.
- 2) PACE Assessments must be properly underwritten for ability to repay.
- 3) Use accurate appraisals.
- 4) Require Adequate Disclosures
- 5) Cancellation or other recourse when savings to not materialize.
- 6) Consult with stakeholders and experienced consumers protection agencies to develop best practices that will prevent improper sales tactics.
- 7) Support Standards for Energy Auditors
- 8) Support Minimum Standards for Contractors
- 9) Homeowner Guaranty Fund

## PROGRAM DESIGN & IMPLEMENTATION STRATEGIES

### PROGRAM MODELS IMPLEMENTED and ENABLED IN OTHER STATES

There are currently four states with active RPACE financing programs up and operating in the United States: California in existence for some time, Florida active since 2013, Vermont and Missouri which recently launched. Links to the websites for those programs are provided. Exhibit B shown below, displays key performance indicators for RPACE program currently in operation, with the HERO Program in California being in place the longest. *Appendix v: Links to Other State RPACE Programs*

**EXHIBIT B**

**Residential PACE Programs**

	California	Missouri	Florida
<b># of Existing PACE Administrators</b>	12 <sup>1</sup>	1	4
<b>Longest in Operation</b>	Sonoma County Energy Independence Program (2009)	HERO Program (Sept. 2016)	Ygrene (2013) <sup>2</sup>
<b>Total Volume of Lending</b>	\$2.2 Billion (March 2016) <sup>3</sup> creating 22,000 local jobs <sup>4</sup>	-	About \$70 Million <sup>5</sup>
<b># of Participating Households</b>	104,000 upgrades (March 2016) <sup>6</sup>	-	About 3,000 (May 2016) <sup>7</sup>
<b># of Contractors Enrolled</b>	8,000 (HERO Program, November 2016) <sup>8</sup>	-	500+ <sup>9</sup>

**Renovate America's HERO Program in California**

- \$1.94 billion in home energy and efficiency improvements across more than 81,000 homes.
- \$3.4 billion into local economies and more than 16,500 jobs created.
- Improvements can save homeowners more than \$3.2 billion on energy bills.
- 3.3 million tons of CO<sub>2</sub> emissions avoided: equivalent to taking 700,000 cars off the road or 490,000 homes off the electric grid ... for a year.

<sup>1</sup> <http://treasurer.ca.gov/caeatfa/pace/activity.asp>

<sup>2</sup> Judicial validation of bond authorizations sought in 2013 during which time counties halted the program. Proceedings concluded in late 2015.

<sup>3</sup> <http://pacenation.us/pace-market-data/>

<sup>4</sup> *Id.*

<sup>5</sup> <http://www.sun-sentinel.com/business/consumer/fl-energy-upgrade-finance-program-progress-report-20160525-story.html>

<sup>6</sup> <http://pacenation.us/pace-market-data/>

<sup>7</sup> <http://www.sun-sentinel.com/business/consumer/fl-energy-upgrade-finance-program-progress-report-20160525-story.html>

<sup>8</sup> HERO Data, November 4, 2016

<sup>9</sup> Florida RPACE municipal reporting.

## PROGRAM ADMINISTRATION, MANAGEMENT & OVERSIGHT COMPONENTS

During the course of this study, MCEC examined the components of RPACE program implementation to design, administer and manage operations; as well as the need to ensure appropriate consumer protections, contactor standards, compliance and results reporting. Based on that analysis and feedback from capital providers affiliated with working programs, several key actors are needed to deliver RPACE financing successfully. These include a central oversight or joint powers authority; a program administrator or service provider; a municipal tax authority; improvement contractors; and residential consumers. *Exhibit C: "PACE ADMINISTRATION"* illustrated below, provides a visual of the roles played by various actors in an RPACE program.

A Central Oversight or Joint Powers Authority (COA/JPA) ideally should oversee program development and administration. This entity can be the issuer of tax-exempt debt to fund the lending pipeline in the flow of capital model illustrated later in this report. The COA/JPA insures regulatory compliance, serves as a neutral party to license program administration service providers, and acts as "trusted advisor" for consumer awareness and technical support with uniformity across jurisdictions.

Successful models have used a central public entity advantageously in program implementation. To benefit from economies of scale the task force was advised having a statewide entity would be best, but the COA/ JPA can also exist as a regional or county sponsored organization.

Aggregation of programs under one umbrella across the state may allow significant enough scale for investors interested in funding loans to participate in the given market, and similar to commercial PACE programs, standardization of documents and lending protocols will make program adoption more convenient for lenders and contractors as well as property owners. This could also help reduce implementation costs that might otherwise be incurred redundantly on a county-by-county basis.

MCEC is statutorily enabled to serve in this capacity, but would require funding to build and implement a program in Maryland. In other state PACE programs, the oversight authority may receive a one-time administration fee, as part of each financing extended, to cover ongoing administrative costs. Additionally, marketing is generally handled by private PACE program administrators as an out of pocket expense.

The Program Administrator (PA) or Service Provider (SP) in an RPACE financing construct is a single, private sector, for-profit entity or are multiple vendors who interface directly with customers and contractors during project implementation and financing. The PA is accountable to the COA/JPA for:

- Financing
- Contractor Enrollment and standards for participation
- Consumer Technical Support and Dispute Resolution using pre-imposed dispute protocols
- Program marketing and promotion

The Municipal Tax Authority (MTA) is the local enabling entity that exists with passage of necessary local ordinance to allow program implementation for property owners. Because tax collection in Maryland occurs at the county and city level administrators in those jurisdictions engaged would be responsible for:

- Recordation of Liens, and
- Collection and remittance of payments to PA
- Recovery of default payments in a tax sale scenario

Improvement contractors that are vetted and enrolled by the Program Administrator, based on guidelines set by the COA/ JPA, provide services necessary to implement improvements for consumers within a list of eligible measures.

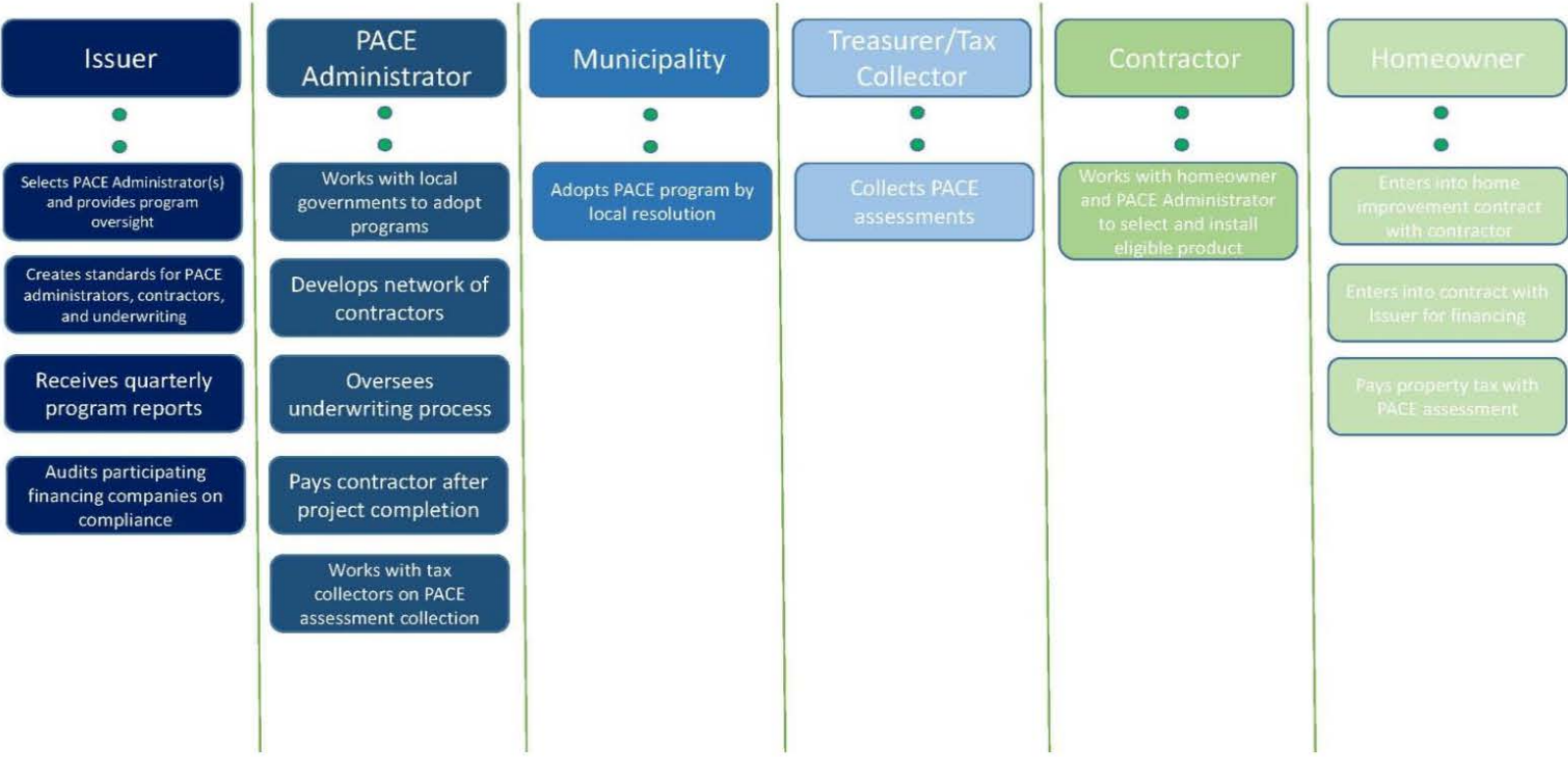
The residential consumer or property owner selects contractors and determine measures they choose to finance and implement. The consumer enters into agreement with the Program Administrator/ Service Provider to obtain financing. The *consumer* is then responsible for reviewing and understanding all disclosures including all related fees attached to the transaction.

**“Best Practice Guidelines for Residential PACE Financing Programs”, released on November 18, 2016 by US Department of Energy, discuss certain key components for inclusion in program design and implementation. While these guidelines have not been adopted as policy, they offer helpful steps outlined for Maryland policy makers to consider as work on RPACE may progress in the state. These include:**

- 1) Define the PACE Program Scope and Eligible Improvements**
- 2) Establish Eligibility Criteria**
- 3) Establish Consumer and Lender Protections**
- 4) Define a Process for Public Recording and Disclosure of PACE Assessments**
- 5) Determine how Incentives and Direct Assistance May Overlap**
- 6) Consider Property Appraisals and Real Estate Transactions**
- 7) Consider Program Execution and Compliance with Applicable Laws**
- 8) Address Quality Assurance and Anti-Fraud Measures**
- 9) Consider Implementation of Debt Service Reserve and Loan Loss Reserve Funds**
- 10) Establish Impact Metrics for Data Collection and Evaluation**

<http://energy.gov/sites/prod/files/2016/11/f34/best-practice-guidelines-RPACE.pdf>

# PACE Administration



## FINANCE, FLOW of CAPITAL & UNDERWRITING CRITERIA

*Exhibit D* illustrates the typical flow of capital in RPACE financing program models currently implemented. In this financing construct the program administrator (PA) advances funds for the COA/ JPA when the PA has paid the contractors for successful completion of improvements pursuant to a financing contract with the property owner.

The program administrator (PA) bundles these funded contracts according to term (5, 10, 15, or 20 year, depending on the statutory maximum), and requests that the COA/ JPA issue bonds in the totality of the value of those contracts. The PA purchases the bonds, securitizes the bonds, and then sells them as notes secured by the affiliated assessments. A governmental entity acting as CAO or JPA issues bonds backed with contract agreements from residential property owners who have agreed to the assessment payment terms associated with the lien filed on the property on which improvements were made. Costs related to the issuance can be recaptured in fees included in the transaction. For consumers to access RPACE capital, a relationship with an eligible contractor is required. The consumer submits an application to the program to determine their eligibility, and that all improvements desired to be funded are eligible under the program.

In March of 2012, Sonoma County California issued a “*Property Assessed Clean Energy (PACE) Replication Guidance Package for Local Governments*”.<sup>11</sup> This document is a source for overall model regulations and procedures that could be used to assist with future program design and implementation for Maryland.

In regard to underwriting criteria, the guidance suggests stringent criteria be implemented to limit risk to investors, lending institutions, and property owners including but not limited to:

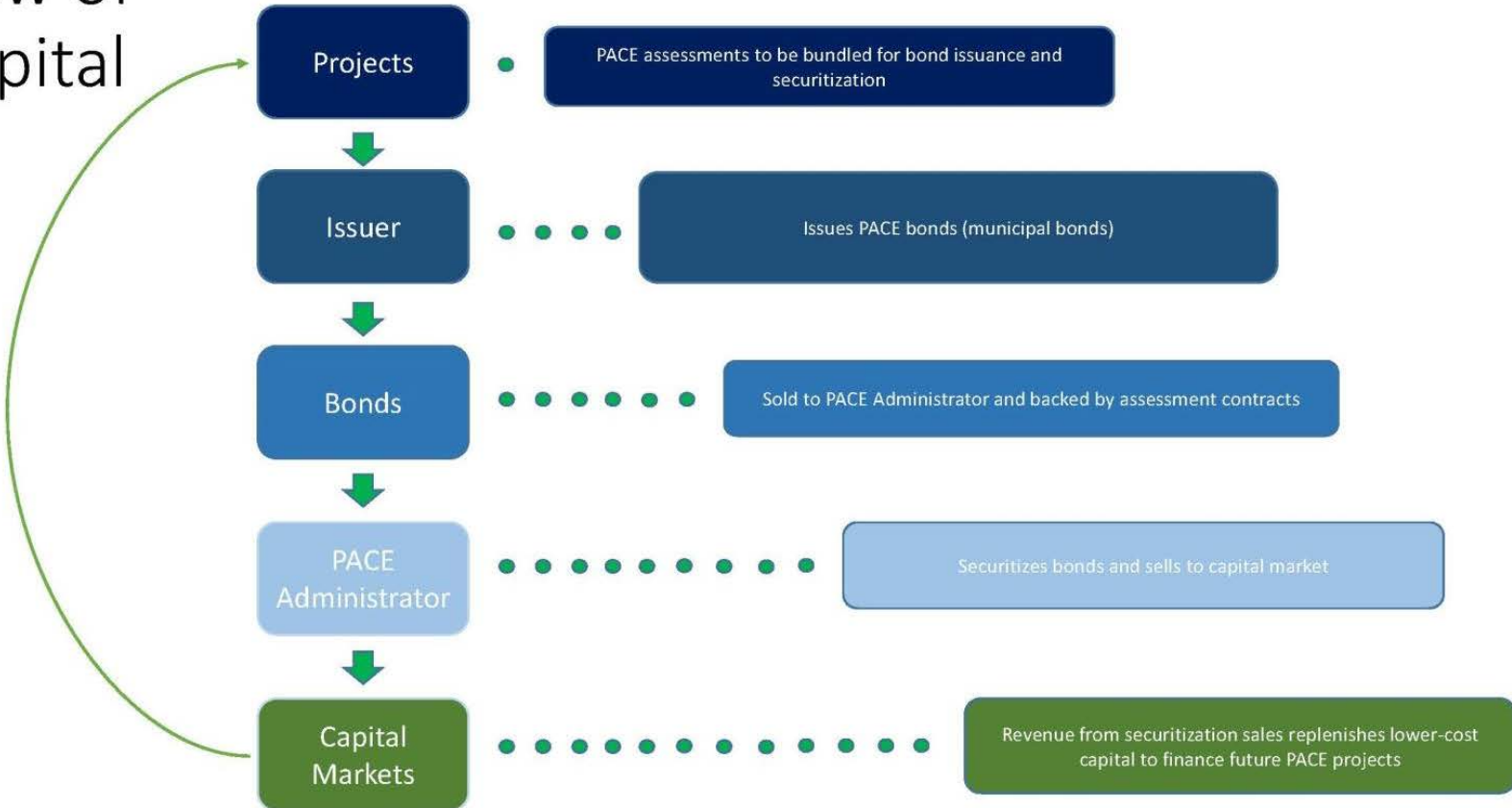
- Sizing the financing to the property value
- Setting a maximum loan to value ratio
- Proof of clear title
- Matching the length of the financing term to the useful life of the improvement
- Checking default history and property tax status
- Documenting energy efficiency gains anticipated to be eligible for financing

Unlike more conventional solutions for access to capital, credit worthiness is not the primary consideration included in related lending criteria with RPACE. RPACE program administrators (PA) look to see that there must be at least 10% available equity in the property, and check if the homeowner is current on property tax and mortgage payments, or if they have missed a mortgage payment in the last 30 months. The PA also consider if the homeowner has been in bankruptcy in the past seven years; has had no notices of default in the past three years; and there have been no involuntary liens recorded can have been against the property in excess of \$1000.

In a comparable loan to value (LTV) calculation associated with RPACE financing, the amount of the PACE lien added to the current debt obligation on the property cannot exceed the fair market value of the property which is based on automated valuation mechanism (AVM).

<sup>11</sup> [pacenation.us/act-now/start-a-program/](http://pacenation.us/act-now/start-a-program/) Property Assessed Clean Energy (PACE) Replication Guidance Package for Local Governments. Sonoma County Energy Independence Program. 2012.

# Flow of Capital



## REGULATION, CONSUMER PROTECTIONS, CONTRACTOR STANDARDS, COMPLIANCE & REPORTING

During work group discussion the need for consumer protections were clearly a concern among stakeholders. Exhibit E: “*PACE Consumer Protections*” illustrates the various elements of consumer protections embedded in the process of project development and financing. The broader need and scope of recommended consumer protections for inclusion in a model RPACE program has been discussed earlier in this document, so this section will focus specifically on necessary contractor standards.

The Sonoma County guidance recommends strong contractor standards and requirements to be enforced through RPACE program regulations, which may include:

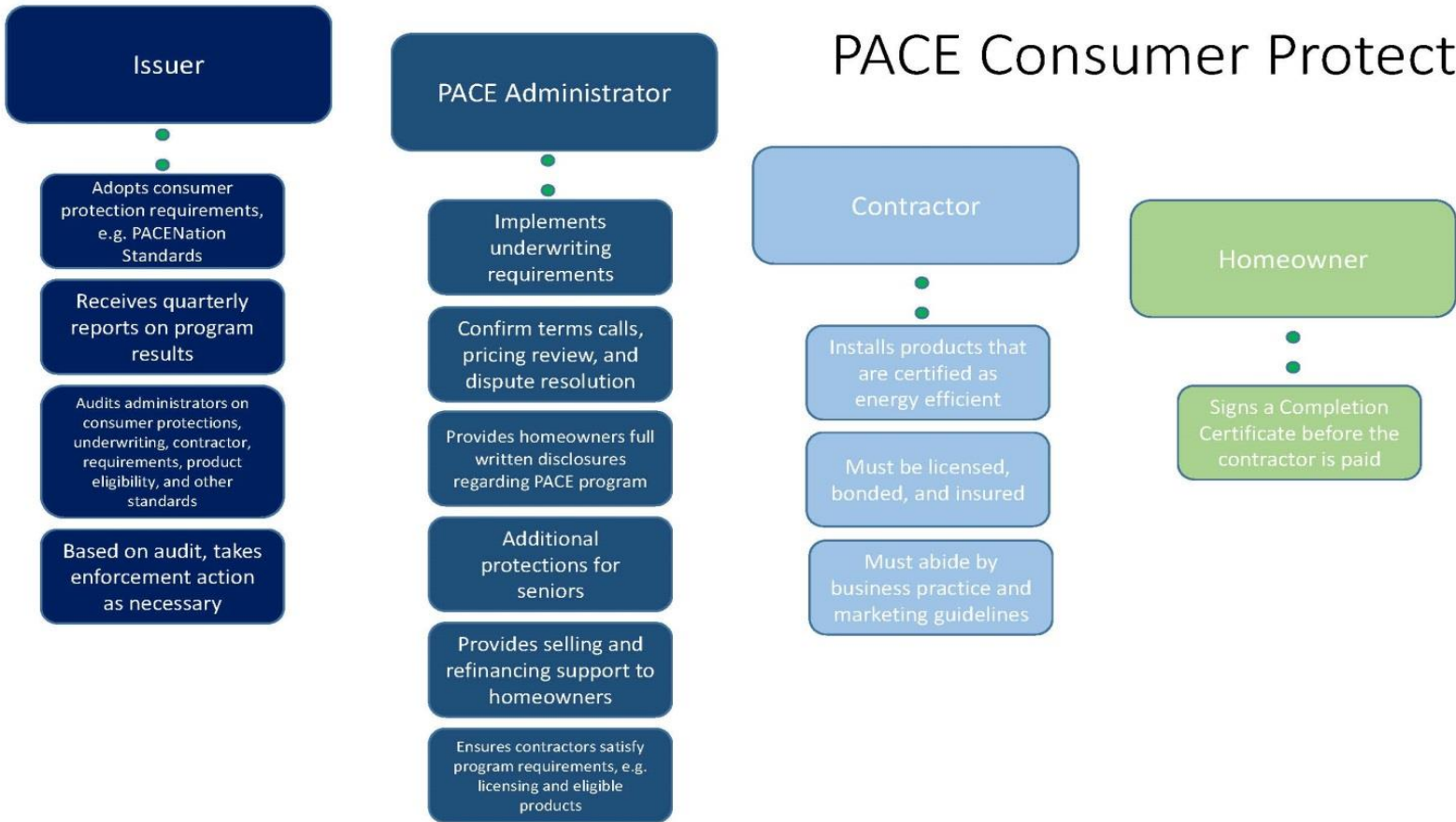
- Valid license in good standing as required by law for specific improvements
- Business License as required by jurisdiction
- Liability Insurance
- Workman’s Compensation Insurance
- Safety and other Requirements for Workers
- Project Compliance with Program Requirements
- Notice to Proceed Authorization
- Documented Quality Assurance inspection of work by licensed inspectors prior to funding improvement

If Maryland were to enable RPACE financing programs, as an element of consumer protections in an RPACE financing model, all enrolled contractors should be required to provide proof of licensing to prevent consumer losses from the onset of the agreement. Eligible participating contractors would be required to further ensure consumer protections by installing only products that are qualified as energy efficient. Additionally, all participating contractors must be licensed, bonded, insured, and must abide by the business practices and market guidelines set forth by the RPACE administrator, and enforced by the JPA.

In regard to consumer protections, there were concerns among the stakeholders with regard to how contractors would be held accountable if there was indeed an issue with contractor workmanship. The Maryland Department of Labor, Licensing & Regulation provides in current financing programs, if a home improvement lender fails to complete his or her contract to standard—including their own agreement with the contractor—the lender is liable to compensate the consumer for lost expenses. As part of an RPACE transaction a consumer should be required to sign a completion certificate verifying that they are satisfied with the work before the contractor is paid. Any RPACE enabling legislation should also require that a process for timely dispute resolution among homeowners, contractors, and program administrators be developed, published and implemented to resolve issues with workmanship, product defects, and customer service. Other mechanisms, such as home improvement warranties or a guarantee fund, should be established to provide an equivalent remedy for aggrieved homeowners from contractor misrepresentation and fraud. This would provide a property owner with transparent and enforceable remedies unique to the PACE transaction, in addition to otherwise conventional remedies against a home improvement contractor.

In an RPACE program model operating statewide or in a given jurisdiction, the Program Administrator (PA) is directly responsible for compliance and reporting as regulated, and is overseen by the COA/ JPA to insure they comply with overall program guidelines and regulations.

# PACE Consumer Protections



## CONCLUSIONS & RECOMMENDATIONS

### **In general MCEC concludes:**

- 1) There was no consensus among stakeholders regarding establishment of RPACE in Maryland.
- 2) Maryland energy and environmental policy goals call for the implementation of energy efficiency measures and the adoption of renewable energy generation solutions that will facilitate desirable reduction of greenhouse gas emissions. Public funds alone cannot adequately address the potential demand for these investments.
- 3) To better enable consumers to make investments in energy improvements, there is a need for financial solutions that provide convenient, affordable, and timely access to capital beyond conventional lending options available in the marketplace today.
- 4) The RPACE financing model has been deployed in other states and has been utilized by communities and consumers to achieve desired outcomes. Best practices for implementing RPACE lending programs may be utilized in a Maryland model program as a solution in the future. Contractors support the implementation of RPACE financing tools to facilitate more demand for their services and the resulting employment opportunities could be beneficial to the Maryland economy.
- 5) During the study process concerns were raised about the impact of PACE liens on potential refinancing and sale of properties so encumbered, especially in light of current FHFA policies which *“prohibit the purchase of a mortgage where the property has a first-lien PACE loan attached to it.”* This concern remains to be a very significant consideration. Other stakeholders noted robust disclosure requirements to address this concern which in their opinion, along with other programmatic requirements, adequately protect property owners. MCEC concludes, the need to insure adequate consumer protections in any potential program design is clearly paramount.
- 6) A centralized statewide oversight authority (joint powers authority) is called for as part of best practices to implement, manage, and provide access to tax exempt capital for program success. MCEC is statutorily enabled to serve in that capacity but currently lacks the resources to do so. Program oversight and management could possibly be executed at the regional or local scale at a less advantageous smaller scale and limiting access to a broader customer base. However, at this time sources of funding to cover the cost of designing, building, implementing and managing an RPACE program are uncertain.
- 7) Additional work among stakeholders, especially buy-in from Maryland counties is necessary in order to prepare a RPACE policy for consideration by Maryland policy makers, so that policymakers will be in the best position to entertain or adopt policy that will enable RPACE financing in Maryland.**

### **MCEC formulated the following recommendations:**

- Continued work should be done to design a statewide program that utilizes best practices, includes the necessary consumer protections and budgets for ongoing administrative support as well as marketing. By doing so the state will be better positioned to act if and when the FHFA guidance is amended.

- Any proposed enabling legislation should identify a source of revenue to fund a statewide RPACE program effort, and authorize MCEC to serve as the Joint Powers Authority to administer and manage a statewide program with certain key performance indicators established for reporting on related impacts.
- The US Department of Energy best practice guidance for management and consumer protection should be considered and possibly required to be incorporated into in any regulation enabling potential program/s to be established in Maryland.
- Those stakeholders identified in HB 387, be somehow engaged in future any in program design and build efforts to ensure that concerns identified in this study would be addressed in any future program construct.

## APPENDIX

***Appendix i. Link to STATUTE: HB 387 Clean Energy Loan Program – Residential Property – Study***  
[http://mgaleg.maryland.gov/2016RS/fnotes/bil\\_0007/hb0387.pdf](http://mgaleg.maryland.gov/2016RS/fnotes/bil_0007/hb0387.pdf)

### ***Appendix ii: MCEC RPACE Study Work Group Participants***

<b>RESI PACE WORKGROUP</b>			
<b>First Name</b>	<b>Last Name</b>	<b>Organization</b>	<b>Title</b>
<b>Required Participation</b>			
Wyatt	Shiflett	MCEC	Director of Finance Programs
Kathleen	Magruder	MCEC	Executive Director
Alex	Choi	Maryland Bankers Association	Government Affairs Specialist
Kathleen	Murphy	Maryland Bankers Association	Executive Director
Mindy	Lehman	Maryland Bankers Association	Vice President of Government Affairs
John	Fiastro	MEA	Director of Government Affairs
Michael	Sanderson	MACO	Executive Director
James	McGarry	Chesapeake Climate Action Network	Policy Director
Cliff	Stanton	Renew Financial	Executive Vice President
Mark	Posner	MD Sierra Club	Ex Com at large
<b>Capital Providers</b>			
Gabe	Maser	Renovate America	Regional Director for Policy
Mike	Lemyre	Ygrene Energy Fund	Residential Sales Representative
Cisco	DeVries	Renew Financial	CEO
David	Crow	Montgomery County Finance	Fiscal Projects Manager
<b>Legislators</b>			
Charles	Barkley	MDGA	Delegate
<b>Other</b>			
Brian	Toll	Ecobeco, Efficiency First	President
CJ	DeSantis	CounterPointe Energy Solutions	Co-Founder
Robert	Enten	Gordon Feinblatt, LLC	Lobbyist
David	Gabrielson	PACENation	Executive Director
Doris	Mason	Rural Maryland Council	Chair
Michael	Giangrandi	Aj Michael	
Charlotte	Davis	Rural Maryland Council	Executive Director of RMC
Meredith	Donaho	Rural Maryland Council	Representative
Jonas	Jacobson	Perry, White, Ross & Jacobson, LLC	Environmental Expert
Sean	Schmidt	MD Alliance of Energy Contractors	Vice Chair
Debbie	Risher	Belair Engineering Services	President & Owner
Susan	Mitchell	Maryland Realtors Association	Director of Government Affairs
Michelle	Vigen	Montgomery County	Senior Energy Planner
Erika	Howard	Office of Sen. Hershey	Assistant
Amy	Samman	Montgomery County	Intergovernmental Relations Liason

### *Appendix iii: Renovate America Press Release*

Contact: Greg Frost

(858) 879-7216

[gfrost@renovateamerica.com](mailto:gfrost@renovateamerica.com)

## **HERO Program a Fast-Growing Platform for Residential Solar**

### ***As HERO-financed home solar installations reach 20,000, Renovate America expands offerings to help grow contractors' business***

LAS VEGAS, Sept. 12 - Renovate America's HERO Program has now financed nearly 20,000 residential solar power installations, resulting in the creation of almost 5,000 clean-energy jobs. The figures, along with a number of new solar product offerings announced today at SPI, North America's largest solar trade show, underscore the increasingly powerful synergies between HERO financing and rooftop solar.

Since it launched in late 2011, the HERO Program has financed more than **119 megawatts** of solar generating capacity. That's more than all the rooftop solar that had been installed as of January in the following states, combined: Alaska, North Dakota, South Dakota, Nebraska, Mississippi, Wyoming, Alabama, Oklahoma, West Virginia, Kansas, Arkansas, Idaho, Montana, South Carolina, Kentucky, Rhode Island, Indiana, Maine, Illinois and Minnesota<sup>[1]</sup>.

The HERO Program is the largest residential Property Assessed Clean Energy (PACE) platform in the U.S., having financed more than \$1.75 billion in home energy and efficiency improvements across more than 75,000 homes. In addition to providing financing for rooftop solar, the HERO Program can be used by homeowners to install energy-efficient products like HVAC, windows, and roofing.

"HERO has been instrumental in expanding access to solar for thousands of homeowners, many of whom are attracted by its competitive interest rates and stringent consumer protections," said Greg Memo, Executive Vice President of Business Development and Product Strategy at Renovate America. "We aim to build on the program's success by expanding our offerings around solar and partnering with leading contractors and distributors."

Today, Renovate America is announcing a number of solar product and programs, including the introduction of a **25-year financing term** for the HERO Program. This will provide the lowest monthly payment option, making solar more affordable to home owners.

Another new program is **HERO Direct Pay**, which allows contractors to take on new jobs without having to worry about spending cash out of pocket or tying up credit on job materials. HERO Direct Pay is possible thanks to Renovate America's partnerships with some of the nation's largest equipment distributors, including CED Greentech, Affordable Solar, Soligent, Krannich Solar, and US Solar. With HERO Direct Pay, distributors ship materials without upfront payments. When the project is complete, HERO pays the contractor and the distributor directly.

Contractors can also overcome working-capital constraints through **HERO Project Advance**. With HERO Project Advance, qualifying contractors can automatically receive an upfront advance of 30 percent of the HERO project

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<sup>[1]</sup> [The United States of Solar](#), SolarPulse, July 13, 2016

amount. When the project is completed, the contractor receives the remaining HERO project amount less applicable interest.

In addition to financing the installation of residential rooftop solar panels, the HERO Program can be used to cover the cost of **related solar work** such as roof repairs, electrical-box upgrades, installation of solar battery technology and even home EV charging stations.

Finally, through the HERO Program's exclusive PACE partnership with the [Electric & Gas Industries Association](#) (EGIA), participating contractors can receive additional member benefits through the EGIA marketplace.

HERO provides 100 percent financing for energy and water saving products with fixed interest rates designed to make payments affordable. Homeowners make payments along with their property taxes, and in the event the property is sold, the remaining balance may be able to transfer to the new owner.

Contractors interested in learning more about the HERO Program can help grow their business can visit [www.heroprogram.com/contractors](http://www.heroprogram.com/contractors) or stop by **Booth 1702** at SPI.

###

### **About Renovate America**

[Renovate America](#) partners with state and local governments to offer [HERO](#), a property assessed clean energy (PACE) financing program, to communities. HERO is the leading residential PACE program in the U.S. and has financed more than \$1.75 billion of improvements. This unique public-private partnership offers consumers access to financing for more than 60 types of home energy improvements without the need for government funding. The HERO Program has received a number of recognitions including a Climate Leadership Certificate for Innovative Partnerships by the U.S. Environmental Protection Agency, inclusion in the 2016 White House Water Summit, the Governor's Environmental and Economic Leadership Award in California, and the Urban Land Institute Best of the Best.

## How Renovate America's HERO Program Compares To Competitive Products

		HELOC	UNSECURED CREDIT
Single Purpose Financing	✓	✗	—
Fixed Rate and Fully Amortizing	✓	—	—
Pricing Review	✓	✗	✗
100% Confirmation of Terms Via Live Phone Call	✓	✗	✗
Enhanced Disclosure	✓	✓	✗
Right to Void HERO Financing	✓	—	✗
Funding Provided Only Upon Completion of Project and Homeowner Certification	✓	✗	—
Contractor Requirements	✓	✗	—
No Prepayment Penalty	✓	—	✓
Pre- and Post-Funding Customer Support	✓	✗	—
Senior Care	✓	✗	✗

 Yes
  Sometimes
  No

**Appendix v: LINKS To OTHER STATE RPACE PROGRAMS**

**California PACE Program Links:**

<https://www.allianceng.com/retail/>

<https://renewfinancial.com/product/californiafirst>

<https://www.energyefficentequity.com/>

<http://sfenvironment.org/residentialpace>

<https://heroprogram.com/>

<http://sonomacountyenergy.org/>

<https://ygreneworks.com/>

<http://www.pacefunding.com/>

<http://www.mpowerplacer.org/>

**Missouri PACE Program Links:**

<http://www.mced.mo.gov/>

**Florida PACE Program Links:**

<https://ygreneworks.com/services-areas/green-corridor/>

<http://www.floridapace.gov/>

<http://www.floridagreenenergyworks.com/>

<http://cleanenergyloanprogram.org/>

**Appendix vi: August 16, 2016 Letter to the Secretaries of HUD and Depart. Of Veterans Affairs from the American Bankers Association. et al.**

August 16, 2016

The Honorable Julián Castro  
Secretary  
United States Department of  
Housing and Urban Development  
451 Seventh Street, SW  
Washington, DC 20410

The Honorable Robert A. McDonald  
Secretary  
United States Department of Veterans Affairs  
810 Vermont Avenue, NW  
Washington, DC 20420

Dear Secretaries Castro and McDonald,

The undersigned trade associations, representing the vast majority of mortgage lenders of all sizes and charter types and real estate professionals in the United States, are writing to express our concern over recent actions taken by the Department of Housing and Urban Development on behalf of the Federal Housing Administration, as well as by the Department of Veterans Affairs, with regard to Property Assessed Clean Energy (PACE) loans.

Prior FHA and VA policy barred the financing or refinancing of a home unless the property was free and clear of any liens other than the FHA-insured or VA-guaranteed mortgage. Because PACE obligations are collected through property tax payments, they exhibit a senior lien position to an FHA or VA loan. Thus, prior FHA and VA policy was designed to ensure that obligations like a PACE “super lien” would not erode the value of the collateral in the event of foreclosure or the sale of the property.

The guidance issued for the FHA and by the VA on July 19, 2016 now allows for the approval of mortgages for the purchase or refinance of properties with PACE obligations, provided they meet certain requirements. Among the requirements in the new guidance is the stipulation that the outstanding PACE loan obligation does not take first lien position ahead of the FHA-insured or VA-guaranteed mortgage. However, the guidance does provide that delinquent PACE loan amounts will retain a first lien position. Allowing any PACE loan amount to hold a senior priority undermines the lender’s (and the government’s) collateral position and disrupts the very nature of secured lending.

Moreover, rather than requiring definitive subordination of the PACE loan to the FHA or VA mortgage, the new guidance simply declares that a PACE loan structured as a tax assessment is not a super lien. But this declaration is a form over substance evasion that fails to protect the FHA Mutual Mortgage Insurance Fund and the VA loan guaranty program.

Furthermore, the July 19th guidance raises a host of serious consumer protection concerns. PACE loans are not typically accompanied by federal Consumer Financial Protection Bureau disclosures and protections associated with home mortgages, including the new Know Before You Owe disclosures, right of rescission protections, or the Ability to Repay standards. This is because PACE financing has been

Page 1 of 2

conveniently classified as a tax assessment rather than a loan. However, a PACE loan is still a financial obligation that can negatively affect one's mortgage repayment ability. Borrowers may not fully understand the consequences of assuming an increased financial obligation on their tax bill. These borrowers also may not be able to effectively compare the cost of a PACE loan to that of more conventional financing—which typically is available at a significantly lower interest rate, with CFPB disclosures. Consequently, the existing PACE dynamics heighten the risk of borrower delinquency, which could lead both FHA and VA to incur higher defaults and loss severities than if PACE loans were required to be properly underwritten and subordinate to the first mortgage in the event of foreclosure.

It is important to note, although outstanding PACE loan obligations technically “run with property,” real estate professionals report that many subsequent purchasers of these homes reject the presence of a PACE payment obligation and insist that the seller extinguish the PACE financing before consummating the purchase. This leaves the original borrowers with a closing table surprise and far less in sale proceeds than they anticipated. The presence of the PACE obligation may also negatively impact home values, especially in foreclosure situations.

Our associations support responsible efforts to provide homeowners with affordable and accessible financing for energy efficient home improvements, and sounder alternatives to the FHA's and VA's new PACE guidelines already exist. We urge you to suspend the applicability of the proposed FHA and VA PACE guidelines and issue the proposal for notice and comment so that lenders, borrowers, home improvement providers, and others may be given the opportunity to comment and assist the Departments in establishing policies that better protect consumers, lenders, and taxpayers.

Sincerely,

American Bankers Association  
American Land Title Association  
Appraisal Institute  
Credit Union National Association  
Housing Policy Council of the Financial Services Roundtable  
Independent Community Bankers of America  
Mortgage Bankers Association  
National Association of Federal Credit Unions  
National Association of REALTORS®  
Real Estate Services Providers Council  
The Realty Alliance

Page 2 of 2

## **Consumer Groups Urge the Department of Energy to Strengthen Protections for Homeowners in Best Practice Guidelines | Media Center**

FOR IMMEDIATE RELEASE: AUGUST 18, 2016 || CONTACT: Jan Kruse, [jkruse@nclc.org](mailto:jkruse@nclc.org), (617) 542-8010

(WASHINGTON) Today, the National Consumer Law Center, on behalf of its low-income clients, and 15 consumer advocacy organizations [submitted comments](#) urging the U.S. Department of Energy (DOE) to strengthen consumer protections in the Department's [draft Best Practices for Residential PACE Financing Programs](#). Municipalities use Property Assessed Clean Energy (PACE) loans to help homeowners finance energy efficiency and renewable energy improvements to their homes. In exchange, the municipalities collect the loan payments just as with property taxes. Failure to make payments promptly can lead to foreclosure for the homeowner.

The comments urge that the Department's guidelines' recommend that municipalities not market PACE loans to low-income households. All too often, the house is the only asset the low-income family has and an unaffordable PACE loan could lead to foreclosure. While consumer advocates believe cost-effective energy efficiency improvements are important for homeowners and support investment in energy efficiency measures, the loans should not risk loss of the home. Low-income homeowners often can get energy efficiency upgrades at no cost, through DOE's weatherization program and through similar programs funded by many utilities across the country. Moreover, PACE loans generally carry higher interest rates than home equity loans, which is another financing option for most homeowners.

"PACE programs amount to betting the house that the energy efficiency improvements will perform as expected and that the PACE loan repayments will be affordable," said Charlie Harak, senior energy attorney at the National Consumer Law Center. "While we support greater funding for energy efficiency programs, PACE loans are simply too risky for families with limited income and assets."

Even for moderate and higher income homeowners, advocates recommend that the Department promote stronger consumer protections for households interested in PACE financing. The most important protection is to ensure that the borrower has the ability to repay the loan, a requirement now required of traditional mortgage lenders. Otherwise, borrowers with equity in their homes but little income will be set up to fail, and possibly face foreclosure. Consumer advocates also recommend that the PACE loans incorporate by contract the same state and federal consumer protections that apply to traditional mortgages (e.g., Truth-in-Lending, the Real Estate Settlement Procedures Act, and the Federal Trade Commission's Preservation of Consumers' Claims and Defenses rule). While disclosures are important, they are inadequate without meaningful consumer protections. Finally, the advocates recommend protections against abusive sales tactics, including the right to rescind the contract. States should also create Homeowner Guaranty Funds to compensate consumers who are harmed by contractors who can't or won't make good when efficiency measures do not perform as promised.

###

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness. [www.nclc.org](http://www.nclc.org)



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**Executive Director**  
Margaret T. Webb, Ph.D.

Maryland Clean Energy Center  
Katherine Magruder  
Executive Director  
1212 West St.  
Annapolis, Md. 21401  
Re: Commission to Study PACE Loans

Dear Ms. Magruder:

The Maryland Land Title Association (MLTA) understands that the Commission to Study PACE Loans is seeking comments from the public and industry leaders in connection with its work to study PACE loans, and with that understanding offers the following comments. By way of background, the MLTA in was founded in 1982 as a trade association in the State of Maryland representing the interests of the land title industry. The MLTA is comprised of hundreds of members—collectively representing several thousand employees—including title insurers, title insurance agents, abstractors, and attorneys. The MLTA's members operate in every county of the State of Maryland. The MLTA advocates safe and efficient transfer of real estate and promotes high standards for examination of land title records and insurance production. By managing much of the real estate closing process, the members of the MLTA provide the catalyst that allows such closings to proceed smoothly from start to finish and help to eliminate risk by careful title examination and curative activities before issuance of title insurance policies.

Our primary concern is the possibility of a PACE loan becoming a hidden lien. There are 24 jurisdictions in Maryland, and there is no uniformity in gaining access to local tax information. Some counties (and Baltimore City) have lien certificates that provide local tax/assessment information, and while they have varying life spans (*i.e.*, 30 days; 45 days; *etc.*) and can take prolonged periods to be processed - the fact is, they are only accurate up to the moment they are issued. Some counties allow liberal access to their finance offices, others do not. Thus, determining the existence of a PACE loan would be difficult if not impossible. While we understand the purpose of PACE loans, we strongly recommend that a lien (or memorandum thereof) be recorded in the land records.

Also, the fact that PACE loans may inhibit a prospective buyer from getting a purchase money mortgage, or a property owner from refinancing existing loans, causes major concern. Establishing lien priority by virtue of recording in the land records is a time honored tradition.

Perhaps it would be better if the repayment of loans were shown on the real property tax bill only and repaid as part of the property's real estate taxes with a notation made on the SDAT property profile for affected property that the property is burdened by such obligation. In the alternative, the PACE loan could be secured by a deed of trust recorded in the land records. Also, if the legislature wants to encourage such loans and improvements by eliminating any *recording* taxes that would otherwise become due on recording such deed of trust, it could create an exemption therefor by amending MD Code, Tax - Property, § 12-108 to include such exemption. Additionally, it could carve out such deeds of trust from automatic subordination as allowed by MD Code, Real Property, § 7-112.

Thank you for your consideration. Please let us know if you have any questions, or we can be of further assistance.

Richard N. Harvey, Esq.  
President  
Maryland Land Title Association

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MLTA@MDLTA.com or mmtwebb@comcast.net | www.MDLTA.org

## **THE DARK SIDE OF PACE SOLAR LOANS IN CALIFORNIA**

*By Sunline Energy (<https://www.sunlineenergy.com/author/austin/>)*

*Posted July 3, 2015 (<https://www.sunlineenergy.com/2015/07/>)*

*In San Diego Solar (<https://www.sunlineenergy.com/category/san-diego-solar-2/>), Solar Energy News*

*(<https://www.sunlineenergy.com/category/solar-energy-news/>), Solar Energy News & Information*

*(<https://www.sunlineenergy.com/category/solar-news-info/>), Sunline Blog*

*(<https://www.sunlineenergy.com/category/blog/>)*

The Property Assessed Clean Energy (PACE (<http://www.sunlineenergy.com/pace-solar-loan-program-san-diego/>)) program is a special type of solar loan that allows residential customers to pay for their installations using property taxes. The PACE program is particularly attractive for homeowners with less than stellar credit. If you fall into this category, you can still grab your slice of the solar energy pie – even if banks and other lenders turn you down for traditional solar loans (<http://www.sunlineenergy.com/using-low-interest-loans-to-finance-your-san-diego-solar-installation/>).

But as Lisa Halverstadt points out, PACE solar loans sometimes have a dark side. Writing for the Voice of San Diego (<http://www.voiceofsandiego.org/topics/science-environment/some-homeowners-looking-to-move-must-deal-with-a-change-of-pace/>), Lisa explores some of the difficulties homeowners face when enrolled in the PACE program.

In a nutshell, PACE solar loans make refinancing your home or selling your property way more complicated – sometimes even impossible.

Let’s take a look.

### **WHY PACE SOLAR LOANS AREN’T ALWAYS THE BEST OPTION**

Because the PACE program is directly tied to your property taxes, these loans must be completely paid off before mortgage collectors and other creditors can get their money back. Even if there is a foreclosure, tax collectors come first in line. In fact, the Federal Housing Finance Agency officially barred Freddie Mac and Fannie Mae from lending to residential solar customers who are still paying off their PACE loans. These 2 mortgage lenders aren’t even allowed to help refinance existing mortgages if PACE loans exist.

What this ultimately means is that in order to sell your home or refinance your mortgage, you must completely pay off your PACE solar loan first. In some cases, this could be thousands – or even tens of thousands – of dollars.

This problem is especially prevalent in Riverside County, which is one of the most active PACE markets in California. More than 8% of all residential properties throughout Western Riverside have used the PACE program in the past 3 years.

Just imagine having to pay off \$20,000 before you could even **try** to move out of your home. This is precisely what happened to one area resident, according to Mission Viejo broker, Eileen Oldroyd. She offers that the PACE program is,

“**[M]uddling the real estate transactions now.... It's not exactly operating the way that we're told it's going to operate, that it's easy to transfer the loan to a buyer and it's easy to refinance. That's not true.**”

And this is not an isolated case.

Roughly 50% of PACE participants who want to move have been “forced” to repay their loans earlier than expected. And approximately 20% have found refinancing virtually impossible.

As a result, Riverside's district attorney launched an investigation into how the PACE program is marketed to prospective customers. The ultimate goal is to ensure that all applicants are completely aware of what they're signing up for.

Fortunately, the problem hasn't gotten this bad in San Diego. This is because PACE is a relatively new concept in this area. But it's possible that what Riverside is currently experiencing is what San Diego residents will eventually run into in the future.

PACE is still a terrific program – just so long as you don't plan on moving or refinancing anytime soon.

If you have questions about solar loans or other types of financing, contact us today for a free consultation (<http://www.sunlineenergy.com/contact/>).

## **HOME IMPROVEMENT-New Study Shows California Homes with Energy Efficiency Upgrades Increased in Value at Time of Sale**

**James Reed**

*The Press Enterprise Published: Jan. 15, 2016 Updated: July 21, 2016 2:54 p.m.*

*<http://www.pe.com/articles/energy-791848-efficient-california.html>*



Sometimes you just have to crunch the numbers.

It makes sense that more efficient doors, windows, roofs, and HVAC systems can lower your utility bills. But are they selling points for your house? With energy efficient improvements being a relatively recent phenomenon in the home-selling process, there have been questions in the marketplace. And the questions only seemed to grow when California homeowners started using Property Assessed

Clean Energy (PACE) financing to pay for the improvements.

Many Realtors, experts say, may not be fully aware of how to market a home's efficiency savings, or simply may not be up to speed on how PACE financing vehicles such as the HERO Program work at time of sale. One of the ideas behind the PACE legislation was to allow, in many cases, the remaining balance on an assessment related to a solar panel or other project to transfer to the new owner when the house resells, so the new owner would take over the payments — and experience the benefits of the improvements.

One top-producing and award-winning real estate team, Pam and Darren Etem, who are Huntington Beach-based agents with Keller Williams Realty, have become quick studies of the HERO Program. Through partnerships with more than 360 local governments, the HERO Program allows homeowners to pay for numerous water- and energy-saving projects, as well as renovations that reduce emissions that are harmful to the environment, over time through voluntary assessments on their property tax bills.

Since its inception in 2011, the HERO Program has financed over \$1 billion in projects in California. Recently representing the buyer of a home in Anaheim, the Etems tapped the expertise of HERO Property Advisors, a dedicated support team for real estate professionals, and learned about the many options available — even though the seller decided to pay off the PACE financing for energy efficient windows.

The professionals at HERO were very knowledgeable and detailed, and answered all of our many questions," says Pam Etem. Over the last 12 years as a Realtor, Etem and her husband have racked up many honors as one of

Orange County's top-producing real estate agents. They also are very active in the Inland Empire, where the HERO Program is more established than it is in Orange County.

The Etems' very positive experience with the HERO Program comes on the heels of a recent study — the first of its kind — that shows the resale value of homes that have gone through home energy renovations through PACE programs. The November 2015 study of HERO homes sold since 2011, by leading national housing economist Laurie Goodman and co-author Jun Zhu, concluded that homes with energy- and water-efficient PACE improvements increased in value when resold — in fact, they recovered more than 100% of the cost of the improvement.

The recovery rate provided in the November 2015 study exceeds the recovery rate at resale of an average of 58-66% for traditional home improvements such as kitchen and bathroom remodels, according to recent analysis conducted by the RemodelMax and the National Association of Realtors. Pam and Darren Etem attended a "lunch and learn" about the HERO Program that Pam Etem called "spectacular." She and her husband call the program a "win-win" for both the buyer and seller, but urge both sides to make sure their Realtor is knowledgeable about the program.



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