

**New York City Department of Finance
Sustainable Energy Loan Program**

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The New York City Department of Finance (“DOF”) is proposing amendments to implement Local Law No. 42 for the year 2021, which amends the definitions of “energy audit” and “energy efficiency improvements” and adds a new definition of “real property”. The amendments to the definitions of “energy audit” and “energy efficiency improvements” authorize PACE financing for improvements to the new construction of a building in addition to renovations and retrofits to existing buildings. The addition of the definition of “real property” will have the effect of authorizing participation in the program by owners of leasehold interests, provided that they are otherwise eligible for the program. .

When and where is the hearing? DOF will hold a public hearing on the proposed rule. The public hearing will take place at 11 AM on **July 19, 2021**. The hearing will be conducted remotely through Webex Event Center. To participate in the public hearing, enter the Webex URL <https://nycdof.webex.com> into a web browser. If prompted to provide a password or number, please enter the following: PACENEW72021. You can also participate in the hearing via phone by calling 646-992-2010. The meeting access code is 173 324 8136.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to NYC Department of Finance through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to David Atik, atikd@finance.nyc.gov.
- **Mail.** You can mail comments to NYC Department of Finance, Legal Affairs Division, 375 Pearl Street, 30th Floor, New York, NY 10038, Attn: David Atik.
- **Fax.** You can fax comments to NYC Department of Finance, Attn: David Atik, at (212) 748-6982.
- **At the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak prior to the date of the hearing. You can sign up by calling Joan Best at (212) 748-7214. You can speak for up to three minutes.

Is there a deadline to submit comments? The deadline for submitting written comments is **July 21, 2021**.

What if I need assistance to participate in the hearing? Please contact DOF’s Office of Legal Affairs if you need a reasonable accommodation of a disability to participate in the hearing. You must tell us if you need a sign language interpreter. You can make any accommodation request by mail at the address given above. You may also make such request by contacting Joan Best by telephone at (212) 748-7214; TTY (212) 504-4115, or by email at bestj@finance.nyc.gov.

Advance notice is requested to allow sufficient time to arrange the accommodation. Please provide at least five business days' notice prior to the hearing to ensure availability.

The following accessibility options are available for this hearing: Simultaneous transcription for people who are deaf or hard of hearing and audio-only access; American Sign Language interpretation on video. For audio-only access, call 646-992-2010. The meeting number is 173 324 8136.

Can I review the comments made on the proposed rules? You can review the comments made on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>.

What authorizes DOF to make this rule? Sections 1503, 1504 and 1043(a) of the New York City Charter ("Charter"), Chapter 30 of Title 11 of the New York City Administrative Code, Executive Order No. 60, dated August 31, 2020, and Local Law 42 for the year 2021 authorize DOF to make these proposed rules.

Where can I find DOF's rules? DOF's rules are in Title 19 of the Rules of the City of New York.

What rules govern the rulemaking process? DOF must meet the requirements of Section 1043 of the Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the Charter.

Statement of Basis and Purpose of Proposed Rule

In 2009, the New York State Legislature enacted General Municipal Law Article 5-L, which authorizes municipalities within New York State to create and administer Property Assessed Clean Energy (“PACE”) financing programs.

In April 2019, the City of New York enacted Local Law number 96 for the year 2019 (“LL 96/2019”), codified at Chapter 30 of Title 11 of the Administrative Code of the City of New York (the “Administrative Code”), which established the Sustainable Energy Loan Program (“Program”) for commercial properties in New York City. The Office of Long-Term Planning and Responsibility coordinates the Program, and, in consultation with the New York City Department of Finance (“DOF”), a third-party administrator under contract with the City administers the Program. The Program is intended to help owners of real property reduce energy consumption and operating costs, create a healthier occupancy environment, increase the value of their buildings, and comply with recently enacted City legislation establishing greenhouse gas emissions limits for buildings within the City.

In March 2021, DOF promulgated rules implementing LL 96/2019. Such rules set forth the procedure for administration of the Program within the City.

In April 2021, the City of New York enacted Local Law number 42 for the year 2021 (“LL 42/2021”), amending Chapter 30 of Title 11 of the Administrative Code to amend the definitions of “energy audit” and “energy efficiency improvement” and to add a new definition of “real property”. The effect of the amendments to the definitions of “energy audit” and “energy efficiency improvements” is that new construction can take part in the Program. The effect of the addition of the definition of “real property” is that the Program may make loans to eligible owners of leasehold interests.

These proposed amendments add the new definitions to the rules and make a few technical changes to account for the definition of “real property”. DOF’s authority for these rules is found in sections 1503 and 1043(a) of the New York City Charter, Chapter 30 of Title 11 of the Administrative Code, Executive Order No. 60, dated August 31, 2020, and LL 42/2021.

New material is underlined.

[Deleted material is in brackets].

“Shall” and “must” denote mandatory requirements and may be used interchangeably in these rules, unless otherwise specified or unless the context clearly indicates otherwise.

Proposed Rule Amendments

Section 1. Subdivision (a) of section 58-01 of Title 19 of the Rules of the City of New York is amended to read as follows:

a. The purpose of the Sustainable Energy Loan Program is to assist [property] owners of real property within New York City in making improvements to their property that save energy and utility costs.

§ 2. The definitions of “energy audit,” “energy efficiency improvement,” and “statement of account” in section 58-02 of Title 19 of the Rules of the City of New York are amended to read as follows:

Energy Audit. “Energy Audit” means a formal evaluation of the energy consumption of a permanent building or structural improvement to real property, conducted by a person certified pursuant to section 58-04 of this chapter, for the purpose of identifying appropriate energy efficiency improvements that could be made to or incorporated into the construction of the property.

Energy Efficiency Improvement. “Energy Efficiency Improvement” means any improvement to real property, whether as a component of the new construction of a building or as the renovation or retrofitting of [a] an existing building to reduce energy consumption, such as window and door replacement, lighting, caulking, weatherstripping, air sealing, insulation, and heating and cooling system upgrades, and similar improvements, determined to be cost-effective pursuant to criteria established by the Authority. However, “energy efficiency improvement” shall not include lighting measures or household appliances that are not permanently fixed to real property.

Statement of Account. “Statement of Account” means the real property tax bill issued to [a property owner] an owner of real property by the Administering Agency.

Comment [GJ1]: Does DOF send Statements of Account to commercial leaseholders?

§ 3. Section 58-02 of Title 19 of the Rules of the City of New York is amended by adding a new definition of “real property” in alphabetical order to read as follows:

Real property. The term “real property” means any property, an interest in which is or is eligible to be recorded with the city register or the office of the Richmond county clerk by the possessor of such interest.

§ 4. Subdivision b of section 58-03 of Title 19 of the Rules of the City of New York is amended to read as follows:

b. To be eligible for a Loan, an Applicant must:

1. Be the [fee] owner of the real property, provided that such owner does not owe any civil penalties, taxes or other debt to the City;
2. Enter into a Program Financing Agreement with a Lender; and
3. Comply with all project approval requirements and application requirements contained in the Program Guidelines and these rules.

Comment [KMP | N2]: Our understanding is that you cannot be the “fee” owner of a leasehold interest.

Comment [GJ3]: The brackets around “fee” indicate deletion of the existing language.

Comment [KMP | N4]: We’d just like to make sure that the usage of “real property” vs. “property” is consistent throughout the entire Rule. We believe that the Admin. Code was amended so that all references are now to “owners of real property” rather than “owners of property” (for. Ex. see 11-3004(b), (c)). For examples in the Rules, see 58-01(a) and 58-08(a).

§ 5. Subdivision a of section 58-08 of Title 19 of the Rules of the City of New York is amended to read as follows:

Comment [GJ5]: I amended a couple additional provisions to make clear that the program is for all owners of real property (as defined), including holders of a leasehold interest.

a. [A property owner] An owner of real property shall provide the Administrator with the annual measurement and verification data for the subject property as required in the Program Guidelines.