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July 14, 2023

NYC Department of Finance,
Legal Affairs Division,
375 Pearl Street, 30th Floor,
New York, NY 10038,
Attn: David Atik.

Re: Proposed Amendments to the Sustainable Energy Loan Program

Dear Commissioner Preston Niblack:

Thank you for considering PACENation's comments on the proposed Amendments to the Sustainable Energy Loan Program. Our members include capital providers, banks and other financial institutions, program administrators, local governments and other PACE leaders from across the nation.

We are excited about this evolution of New York City's C-PACE program and appreciate the opportunity to contribute to its success. PACENation's members are eager to share best practices as you refine these guidelines and implement the program. As you evaluate comments on the proposed rule, please consider PACENation a resource.

We offer these comments to help ensure that the C-PACE program achieves the public benefits set forth in the law, delivers to property owners the advantages of C-PACE financing as a special assessment, fosters a vibrant C-PACE market, and creates an excellent customer and stakeholder experience.

A successful C-PACE program can help New York achieve its ambitious Climate Mobilization Act building decarbonization goals. The program delivers affordable financing which can incentivize building owners to cut their emissions, without public investment, which we expect will enable C-PACE to scale up to help meet or exceed these goals.

In 2021, New York City authorized the use of Commercial PACE financing for new construction, as well as for owners of leasehold interests. This draft rule would implement that

law, set forth additional criteria for Program financing for new construction projects, and set forth additional criteria for owners of leasehold interests to receive Program financing.

Eligibility criteria for PACE financing:

The draft rules only allows for C-PACE to be used to finance a new construction building project or major renovation project if the building will qualify as a Low Carbon Building. This provision would make New York City the most restrictive jurisdiction in the nation when it comes to the use of C-PACE for new building construction. This approach is consistent with the City's building decarbonization policy, even if it anticipates the application of the Climate Mobilization Act and the New York State All-Electric Buildings Act by a few years. This restrictive requirement will reduce the availability of C-PACE as a financing option for new building construction projects. In light of New York City's leadership in building decarbonization we are supportive of this forceful approach.

However, in the unlikely event that the implementation of the Climate Mobilization Act or the All Electric Buildings Act's requirements are postponed, the requirement that C-PACE be limited to low-carbon buildings will make C-PACE less competitive with building owners' other financing options, and a potential consequence may be that fewer of the clean energy and energy efficiency features which C-PACE can fund will be installed. Accordingly, we ask the Department of Finance to include a provision in the final rule which allows the Commissioner to instead require new construction to meet or exceed the applicable Climate Mobilization Act emissions threshold, if the statutory requirements for all building construction become less restrictive.

Also it is important to note that it will prove difficult to establish that low-carbon buildings are "cost-effective," at least in the manner that the City and State currently apply the General Municipal Law §119-gg statutory standard, and at least until the All Electric Buildings Act takes effect. It often will be less expensive to build or operate a building which is heated with natural gas, for instance, which would make C-PACE ineligible for the project. We ask that the City and State swiftly address this potential misalignment with the application of the cost-effectiveness standard and the new construction Low Carbon Building requirement contained within this proposed rule, perhaps by exempting new construction Low Carbon Buildings from the application of the cost-effectiveness rule.

Leaseholds:

The draft rule allows certain lessees to apply for C-PACE funding. However, the rule does not explicitly state the outcome of a default on property taxes. The clear presumption is that the contractual agreement between the lessor and lessee regarding a property tax default would apply, and ultimately the lessor is responsible for the payment of property taxes and the C-PACE assessment. It may reduce confusion between lessees and lessors, and thereby ease the administration of the program, to explicitly lay out the consequences for nonpayment of the assessment in the final rule.

The draft rule also prohibits a lessee to apply for C-PACE financing if the term would be longer than the remaining lease term. However the rule also requires the lessee to obtain the lessor's consent for the C-PACE application, which renders the restriction of the term of the C-PACE

financing to the length of the lease term unnecessary. Additionally, because many lease terms include provisions by which the terms of the lease can be extended, determining the true length of the lease may actually be surprisingly complicated. We recommend that this provision tying the term of the C-PACE financing to the remaining term of the lease be stricken.

Disbursements:

The rule stipulates that the financing provided through a C-PACE assessment “shall be deemed to have been disbursed as of the closing date for purposes of establishing a schedule for repayment of the Loan, including any interest or fees.” This increases the cost of financing for property owners because they pay for capitalized interest on the C-PACE assessment portion of their project financing, as compared to a typical construction loan which accrues interest as the different phases of the project are funded. This impact is most significant during complex new construction projects which can take years.

PACENation members are familiar with other approaches to disbursement of PACE funds that would reduce the impact on the property owner. For instance the program administrator in Connecticut deems C-PACE funds as disbursed at the project’s completion, or in Utah where program administrators deem a certain percentage of total construction capital as PACE eligible, depending on the measures implemented, but allow those funds to be deemed disbursed at any point in the construction process in order to maximize the building owners’ flexibility. These approaches may be incompatible with the City’s administration of cost-effectiveness standard, which requires the funding to be tied to individual components of the overall construction project. If the City were to apply the cost-effectiveness standard more flexibly, particularly when it comes to new construction where the impact of the City’s proposed rule regarding disbursements is most significant, there would be some ability for building owners to deploy the PACE dollars in a manner that minimizes their costs.

We appreciate your consideration of these comments, and hope to continue this dialogue at your convenience. Thank you for your leadership.

Sincerely,



Mary Luévano

Executive Director

PACENation