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*"To enrich lives through effective and caring service"*

December 31, 2015

TO: Supervisor Hilda L. Solis, Chair  
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Supervisor Don Knabe  
Supervisor Michael D. Antonovich

FROM: Dave Chittenden   
Chief Deputy Director

Joseph Kelly   
Treasurer and Tax Collector

SUBJECT: **REPORT BACK ON COUNTY RESIDENTIAL PROPERTY ASSESSED  
CLEAN ENERGY (PACE) PROGRAM**

**Background**

At the November 3, 2015, Board meeting, during testimony on item 38 regarding increasing the County's Property Assessed Clean Energy (PACE) bond authority, Internal Services Department (ISD) and Treasurer Tax Collector (TTC) offered to provide a report in response to issues raised regarding the residential PACE program. These issues primarily concerned:

- The adequacy of disclosures to consumers on all PACE related marketing materials and loan documents regarding:
  - the repayment of a PACE loan through the assessment on the homeowner's annual secured property tax bill;
  - the consequences of defaulting on a PACE loan.
- The operational mechanisms in place that afford consumers various protections in all phases of an energy retrofit or water conservation project financed through the PACE program including application, project completion, and payment of property taxes.
- The status of automating the review of PACE applications through the implementation of software.

## **Executive Summary**

In developing the County's PACE program, we focused on ensuring Program Administrator (i.e. HERO and CaliforniaFirst) and their contractors' compliance with a broad array of requirements to develop an informed consumer base, and then, should consumers decide to pursue a project through the PACE program, to afford consumers with various protections. These included:

- the integration of consumer protection measures into Program Administrator contractor network training modules, advertising policies and sales training efforts;
- an assessment of projects that fall outside normally expected price ranges;
- the establishment of a dispute resolution team to assist consumers with issues;
- a broad array of requirements to establish a pool of competent, licensed contractors who would be trained on program requirements and monitored for adherence to those requirements.

This report back on the PACE program occurs approximately six months after the County launched the program. During these six months, participation by County constituents has surpassed expectations and demand is expected to continue to grow at the same or similar rate over the next several years. In this report, we have evaluated each area discussed at the November 3, 2015 meeting and responded accordingly. Through this review, we determined that while the program design and related contractual requirements are targeted to achieve consumer-focused goals, both the County and the two Program Administrators need to continue to monitor performance and to identify and implement any enhancements that are deemed necessary.

Since Program launch, County staff have primarily been focused on managing the operational aspects of the Program which, given the constituent demand, have been material. Accordingly, we outline a plan to:

- improve the coordination with Program Administrator staff;
- automate the project review process so that staff only review cases that are flagged as not aligning with one or more criteria;
- leverage the County's PACE website for purposes of consumer disclosure and protection;
- work with the Department of Consumer and Business Affairs to expand its responsibilities in support of the Program.

### **Potential Consequences of Missed Payments**

While assessment bonds in California typically allow for judicial foreclosure following a single missed payment, the County's residential PACE program provides significantly greater protections for its participants. Judicial foreclosure can be initiated by bondholders in the County program only if:

- a participating homeowner is delinquent for seven months following the second installment due date of February 1;
- the homeowner fails to resolve this delinquency within a subsequent 60-day cure period;
- the cash reserve fund for the County's residential PACE program has been depleted;
- the Program Administrator's reserve fund "backstop" has been exhausted.

As a result of these conditions, it is unlikely that one missed PACE assessment will trigger a judicial foreclosure and threaten the participant with the loss of his or her home.

The potential risk of foreclosure was of particular importance to our departments as we designed the County's residential PACE program. The use of a Program Administrator backstop to supplement the cash reserve fund is unique to the County program and provides for greater security than exists in any other residential PACE program in California. Furthermore, the County program has provided for multiple disclosures regarding foreclosure risk throughout the application process, assessment contract, and within the insert in the annual property tax bill.

### **Review of Marketing Materials to Limit Risks of Inability to Pay**

Each Program Administrator was contractually required to develop and enforce a Marketing and Public Relations Program, which was approved by ISD. As stated at the November 3, 2015 meeting, lack of adherence to certain components of the Marketing and Public Relations Program resulted in the inappropriate approval to use the County seal on certain marketing documents, as well as language that was not consumer focused.

Our review of PACE marketing efforts allowed us to refine our procedures, and those of the Program Administrators, in the following ways:

- Processes to issue all marketing materials by the two Program Administrators and all members of their contracting network will be pre-approved by the County.

Until otherwise directed, that approval process will include management approval at each of our departments and the Chief Executive Office's Countywide Communications Office.

- Any marketing materials that include the maximum loan amount available must also include an indicator of the increase to the annual secured property tax bill associated with full utilization of the maximum loan amount. References to no payments, limited payments or deferred payments are prohibited. The inclusion of the potential increase in secured property tax payments at the very outset of the marketing process gives consumers information necessary to determine an ability to repay the debt.
- Marketing materials should not include an "apply by" date because the program is not ending.
- All marketing materials must refer to the County PACE website or URL. This website is discussed later in this report.
- Consistent with the intent of Board Policy 3.030, all marketing materials should include a Spanish language disclosure.

Collectively, these requirements serve to inform the consumer with factually correct information regarding project scope, process and loan repayment estimates and mechanisms.

### **Consumer Protections in All Phases of a PACE Project**

We reviewed the protections that each Program Administrator is contractually required to afford to consumers in each phase of an energy retrofit or water efficiency project financed through PACE. These include, but are not limited to:

- Application Phase
  - The PACE Program application and financing documents provide the disclosures required under the contract with the County.
  - Homeowners are provided a Right to Cancel, without cost, within three business days from the date they signed the Assessment Contract.
- Project Completion
  - As part of Assessment Contract review and approval, total project and individual measure costs are evaluated for compliance within cost limits.

- Upon project completion, homeowners sign a Completion Certificate acknowledging satisfactory installation of equipment and total project costs from the home contractor.
- Homeowners are required to provide project permits indicating work was completed under local jurisdiction building requirements.
- Contractor Monitoring by the Program Administrator
  - Program Administrators implement a Participating (Home) Contractor Management Plan which includes registration, training, license verification, and maintenance of “good standing” status of home contractors.
  - Program Administrators maintain a database of project measure and financing parameters (measure type, size and cost) and associated home contractor.

Each Program Administrator has also developed, and the County has approved, Customer Complaint Protocols that require the Program Administrator conduct timely investigation of all complaints. As part of its Customer Service Plan, each Program Administrator is required to track customer service metrics on multiple service levels and maintain a toll free number operated by a live person during regular business hours.

These contractual requirements provide a framework that is consumer focused. However, we believe there are opportunities to improve compliance with various contractual requirements that serve to uphold program terms and identify and reduce product overselling, or the oversizing of projects in general.

To this end, ISD has been working to automate the application review and approval process. As part of that automation, our departments are working collaboratively to establish a set of criteria that when triggered, would invoke a second level review by the Program Administrator and ISD. An example would be a senior, age 65 or older who has requested more than fifty percent (50%) utilization of the available credit line disclosed to him or her. Another example would be any applicant, regardless of age, whose loan results in a loan-to-value in excess of 95% for the subject property. Related to the risk of product overselling or project oversizing, ISD would populate the same system with a range of acceptable price ranges (low, median, and high) for components of a project, and projects in the high range and beyond would require a second level review by the Program Administrator and ISD. This would also allow ISD to perform trend analyses over time, to identify potential ‘price-creep’ on eligible measures or potential abusive practices by certain contractors.

Finally, we will begin to review the consumer complaint process to ensure that contractors who have been found to have violated policy are suspended or removed from the Program.

### **Plan for Improved Consumer Protection**

Our departments believe the following steps, to be fully implemented over the next several months, will serve to better focus staff resources, leverage technology, and build an infrastructure to maintain consumer protections over the long term.

- Improving County efforts to ensure Program Administrator accountability. This will include monthly meetings with the Program Administrators, ISD and TTC, to review consumer complaints, identify potential remedies, and implement program enhancements.
- Automating the County's review of the application process to free staff resources to review transactions that fall outside acceptable ranges and identify trends that indicate degradation of consumer protections.
- Branding the County's PACE website, LAPACE.org, as a one-stop County-sanctioned information source on PACE. The website provides factual information on the program risks, repayment of the project costs through the annual property tax bill, and information on various consumer protection measures, including dispute resolution processes. We will require that all marketing materials include reference to this website.
- Ensuring that staff at the Department of Consumer and Business Affairs (DCBA) has the necessary program knowledge to handle PACE inquiries and complaints, and implementing a process for DCBA to pass information back to ISD related to common themes and potential Program enhancements.

### **Development of Industry Best Practices**

The County's two Program Administrators have undertaken efforts to develop Industry Best Practices related to PACE consumer protection standards, ostensibly for adoption by PACE Program Administrators statewide. This represents their effort to develop consistent standards across the PACE industry. We believe this development is positive, but we are not yet in the position to opine on the adequacy of these standards, given our more detailed review of the protections each Program Administrator is required to establish under its contract with the County.

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We briefed a draft of this report at the Operations Cluster meeting on December 17, 2015. In an effort to keep your Board informed on our progress, we will report on a quarterly basis through the calendar year 2016, on the status of the PACE program with particular emphasis on consumer protection standards.

Should you have any questions, please contact Dave Chittenden at (323) 267-2103, or via email [dchittenden@isd.lacounty.gov](mailto:dchittenden@isd.lacounty.gov). You may also contact Joseph Kelly at (213) 974-2101, or via email at [jkelly@ttc.lacounty.gov](mailto:jkelly@ttc.lacounty.gov).

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