



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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December 23, 2022

Charlene Heydinger
President, Texas PACE Authority
P.O. Box 200368
Austin, TX 78720

Subject: Property Assessed Clean Energy (PACE)
Texas PACE Authority (TPA)
State of Texas
PACE Program Assessment Conditional Approval

Dear Ms. Heydinger:

This letter responds to your request for HUD's review of the PACE Assessment Procedures of the Texas PACE model program under your administration, and a determination as to its compliance with HUD's required Assessment Procedures promulgated in Housing Notice H 2017-01 (the "Notice"), which provides the conditions for determining if a PACE program is compatible with HUD's multifamily housing programs. TPA provided a detailed description of the operation of the Texas PACE program, together with an opinion from the Office of the Texas Attorney General.

I am pleased to advise you of HUD's determination that the Texas PACE Authority's "Texas PACE in a Box" model program is conditionally approved as described more fully below. HUD's determination was based on the following criteria and conclusions:

- A. *The TX PACE special assessment will be assessed by a state, county or municipality pursuant to state law and sent with tax bills;*
- TPA's model program is partially compliant with Notice H2017-01. TPA's letter to HUD partially meets requirements laid out in this element, however they fail to comply with the notice and collection process detailed in Notice H2017-01. TPA argues that sending the assessments with tax bills would be extremely burdensome. Reasons provided by TPA for it being impractical to send the assessment with the tax bill include: (1) since county tax assessors and collectors rely on third parties to print and mail tax bills, the county tax office would need the third-party printer to "pull" the envelope for each PACE-assessed property and ensure that the tax bill was not sent following the regular process; and (2) in the case of city PACE programs, inserting a city's annual PACE notice into the tax bill prepared by the county tax office would require an interlocal agreement between the city with the PACE program and the county in which the PACE property is located.

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307 W. 7th St. Suite 1000
Fort Worth, Texas 76102*

*Kansas City Satellite Office
400 State Avenue, Suite 300
Kansas City, Kansas 66101*

- **CONDITION OF APPROVAL:**
 - i. Prior to HUD review and acceptance of a PACE application, TPA must enter into an agreement with the local government to become the authorized representative and program administrator, as required, in the locality to which the PACE assessment is located.

B. *Payments on the special assessments will be collected with tax bills;*

- **NONCOMPLIANT.** Under TPA’s program, payments are not collected with tax bills. Instead, the PACE lender directly collects non-delinquent PACE payments. However, of note, delinquent PACE installments may be collected in the same manner as delinquent taxes, with the local government foreclosing pursuant to the PACE assessment lien Notice H2017-01.

- **CONDITION OF APPROVAL:**

- i. Localities participating in TPA’s model program must grant written authority allowing the PACE lender to collect assessment payments in lieu of through tax bills.
- ii. PACE lenders of TPA’s model program must acknowledge in writing that payments will be collected apart from tax bills, and it will be their responsibility to ensure appropriate funding is available to satisfy the payments.
- iii. HUD requests that TPA will require mortgage lenders to agree to escrow PACE installments and assume responsibility for paying PACE installments.

C. *At any time, the only obligation is the semi-annual/annual payment(s) then or past due and payable, with no acceleration of the entire assessment amount;*

- TPA’s model program is partially compliant with Notice H2017-01. Acceleration of the entire assessment amount is not permitted under TPA’s program. However, TPA’s program allows PACE obligations to be due more frequently than semi-annually (e.g., monthly or quarterly). That the PACE assessments cannot be accelerated is, in our understanding, critical to approving a PACE program, as it limits the risk created by a PACE loan; TPA’s program satisfies this requirement that the PACE obligation cannot be accelerated. However, TPA’s program permits payments to be due more frequently than provided in HUD’s PACE Notice.

- **CONDITION OF APPROVAL:**

- i. PACE payments should be restricted to be due no more frequently than semi-annually.

D. *In the event of a default on payment of the assessment, the mortgagee receives timely notice and a reasonable opportunity to cure the non-payment;*

- TPA model program is compliant with Notice H2017-01.

E. *The TX State Attorney General’s office has opined that the PACE obligations are special assessments and treated in a similar manner as the real estate taxes;*

- TPA model program is compliant with Notice H2017-01

FUTURE APPLICANT REQUIREMENTS: Additionally, HUD is requesting to review every TPA PACE applicant's proposed scope of work and construction process. The proposed condition recognizes that PACE loans can have significantly different construction characteristics (including the scope of work, mechanisms for mitigating construction disputes/mechanic's liens, and owner obligations). This will promote compliance with HUD guidelines for PACE applications.

Project owners seeking to use TPA's PACE program may now submit individual proposals to my office for our consideration. Property owners and lenders should be cautioned not to enter into PACE Agreements on such properties without prior HUD review and written approval. Please note, HUD is required to review a separate application from each HUD affiliated owner/borrower for approval of PACE financing under Notice H2017-01. Because there are different jurisdictions throughout Texas, with different PACE programs, this conditional approval is not "global". Prior to entering into an agreement with a jurisdiction or locality, TPA is required to submit a summary memo explaining how the jurisdiction or locality application complies with HUD's previously reviewed model program, so HUD can make a clear assessment that the individual jurisdiction in which the property is located complies with the requirements of Notice H2017-01.

Certain PACE jurisdictions have introduced Retroactive PACE financing, which allows PACE financing of Energy Conservation Measures (ECMs) as many as 3 years after the ECM's were actually installed and paid for out of non-PACE sources. However, HUD's Notice anticipates that PACE financing will either be used by an existing property to fund new ECM's, or potentially that PACE financing will accompany a new FHA mortgage to pay for a specific set of ECM's not already covered by the FHA mortgage. Retroactive PACE financing creates conflicts with several aspects of the Notice, and HUD does not consider it an acceptable form of PACE financing for use with FHA-Insured or HUD-held properties.

To facilitate successful outcomes, your future submissions should consider and address all aspects of Sections V and VI of the Notice, and must include all applicable supporting documents, audits, and analyses (refer to the submission requirements listed in Section VI). Special attention with specific reasoning should be given to any element of the Notice where you feel a document or condition does not apply to the proposed transaction, or where you feel a waiver from the terms of the Notice might be justified. Be advised, Sections V and VI of the Notice are the responsibility of the owner/borrower, not TPA.

If the PACE proposal is to be submitted in conjunction with new FHA-insured financing (either refinancing, substantial rehabilitation or new construction), the FHA lender will present the PACE financing proposal to HUD as a component of its FHA application. The information you provide to the lender must conform to the same content, conditions and documentation requirements of the Notice (Sections V and VI) and must be sufficient to facilitate the lender's evaluation and underwriting conclusions on the proposed PACE transaction. We expect that early and continuous coordination with the developer and FHA lender will be necessary in these instances.

If the PACE proposal is not connected to new FHA financing, the complete PACE package should be submitted for HUD review to the MFSouthwest@Hud.Gov email address.

Following HUD's review of any individual PACE proposal, HUD will issue a written approval or denial letter. Should you have questions concerning any aspect of this approval letter or the Notice requirements, please contact Mr. Bryce Klein at bryce.k.klein@Hud.Gov or at (817) 978-9416.

Sincerely,

Christie Newhouse
Regional Director
Multifamily Southwest Region

Cc: Joshua Gold
Michael Gamez
Robert Iber