



April 11, 2018

Hon. Brian L. Ellis
Majority Chair
House Commerce Committee
105 Ryan Office Building
PO Box 202011
Harrisburg, PA 17120

Hon. Curtis W. Thomas
Minority Chair
House Commerce Committee
214 Irvis Office Building
PO Box 202181
Harrisburg, PA 17120

Re: SB 234 – Property Assessed Clean Energy
Oppose any Amendments to Authorize
Risky **Residential** PACE (R-PACE) Loans

Dear Chairman Ellis, Chairman Thomas, and Members of the Commerce Committee:

The undersigned organizations urge the House Commerce Committee to oppose any amendments to SB 234 that would add or approve **residential** Property Assessed Clean Energy (R-PACE) programs. In its current form (PN 1376), as passed by the Senate, SB 234 would authorize only commercial PACE (C-PACE). Experience in other states has shown that R-PACE is a dangerous product for all residential consumers, but particularly to the low-

to-moderate income families and seniors who the undersigned organizations represent.

Several states and local governments have adopted R-PACE programs in a well-intentioned effort to save energy, protect the environment, and reduce homeowner energy costs. However, R-PACE has resulted in numerous problems for both consumers and the housing industry. While local governments authorize R-PACE programs, the loans are typically promoted on the front lines by private program administrators and home improvement contractors who often sell unnecessary and unwanted home improvements, which may have little to no prospect of deep energy savings. The loans are ultimately funded by lenders, who receive a high rate of return while holding a safe senior lien position that makes them insensitive to the homeowner's ability to repay.

R-PACE Provides Unaffordable Loans without Screening for Ability to Repay

Unlike traditional mortgage financing or home equity loans, R-PACE loans do not undergo the scrutiny of regulators or require lending disclosures. While the Dodd-Frank amendments to the Truth in Lending Act (TILA) established ability-to-repay rules to ensure that consumers are offered mortgage loans that are affordable, based on verified income, and are suitable to the consumer's credit circumstances, R-PACE has typically not had these safeguards. California, which some in the industry tout as having robust consumer safeguards, is a prime example of how R-PACE skirts these best practices. Contrary to typically accepted underwriting standards, California law permits a program administrator to first commit a consumer to a contract to repay a R-PACE loan and only afterwards to determine whether the consumer has an ability to repay the loan. The simple reality is that R-PACE loans are mortgages that put a home at risk and should be required to follow the same TILA consumer protections required of other mortgage products, subject only to limited adjustments that recognize the structure of R-PACE loans being payable as a tax assessment.

R-PACE Facilitates Financial Abuse

Like the predatory subprime mortgages of the 1990s and 2000s that brought about the most recent recession, homeowners who are marketed R-PACE are often pressured by PACE contractors to sign contracts on the spot before getting full disclosure of the loan terms and without having a waiting period to think about it. Many R-PACE loan contracts are signed electronically on mobile tablets brought by contractors in door-to-door visits. It is not clear when, if ever, consumers receive paper copies of the loan documents, or if they even see any electronic versions before documents are "signed."

Here are two examples of R-PACE loan abuses that have been chronicled by the National Consumer Law Center (NCLC):

- An 84-year old with dementia and health problems agreed to pay over \$45,000 for home improvements, though her only source of income is Social Security, amounting

to less than \$1,000 a month. After a four-hour sales pitch, the home improvement salesperson convinced her to sign four documents, which he represented were estimates but which the contractor later asserted were binding contracts. She purportedly agreed to R-PACE financing for 19 vinyl windows at \$805 each, stucco and wood exterior work for \$27,650, and a patio cover for \$2,250. The work was done shoddily, her energy bills did not decrease, but her tax bill increased exponentially. The annual repayment amount comprises half of her income. The total repayment amount, including fees and interest, was \$109,000. The R-PACE documents were signed electronically, and the homeowner did not receive a copy of the finance agreement until a relative intervened several weeks later. She could not afford the payments and filed suit to prevent foreclosure.

- The daughter of an elderly woman with cognitive impairment and dementia attempted to help her mother move to assisted living. In taking over her mother's financial affairs, including the sale of her house, the daughter learned that she had been taken advantage of financially. The realtor handling the sale discovered in a title search that there were two property tax liens, one under HERO (\$22,000) and another PACE lien (\$49,000) by a different R-PACE provider. The \$22,000 HERO assessment was apparent in the property tax records and also in her mother's papers, but nothing could be found on the \$49,000 R-PACE lien. Because the R-PACE payments don't start until the following year, the \$49,000 assessment was not listed in the property tax records and was not discovered until the title/escrow process. The buyer was willing to assume the smaller HERO assessment, but not the larger \$49,000 R-PACE assessment. The mother was forced to pay off the \$49,000 out of the sale proceeds -- money that was to pay for nearly a year of her care in the assisted living facility. The daughter has been unable to get any receipts or financing paperwork regarding the solar panels purchased and installed pursuant to the loan. The contractor never completed the interconnect agreement with the Department of Water and Power, so the solar panels aren't even working. The daughter has also questioned why her mother qualified for the loan, as she clearly could not afford the payments on her Social Security income. The daughter stated: "This is such a bad deal, all the way around. I'm sure my mother didn't understand what she was getting herself into"

We encourage you to review other consumer stories about R-PACE in California compiled by NCLC.¹

R-PACE Enables Contractor Fraud

Our consumer advocate colleagues from around the country continue to receive reports of contractors using false or misleading representations to lead homeowners to believe that R-PACE is a free government program, that they will receive significant tax breaks or rebates, or that the loans will pay for themselves. In these jurisdictions, homeowners continue to complain about shoddy or incomplete work and damage to their homes by contractors. Seniors living on fixed incomes have seen their mortgage and tax payments skyrocket.

¹ See: https://www.nclc.org/images/pdf/energy_utility_telecom/pace/ib-pace-stories.pdf

Experience in other jurisdictions that have implemented R-PACE shows that many homeowners still do not understand that the loans will result in a tax lien, that the energy savings will not cover the loan payments, or that the homeowner may not be eligible for promised tax rebates.

Insufficient or Minimal Energy Savings at a Higher Cost

A common selling point promoted by R-PACE providers is that energy efficient upgrades will reduce the homeowners' utility bill in an amount sufficient to offset the cost of the improvements. However, R-PACE loans have often been used for work like expensive "cool coat" paint and other work that is unlikely to produce significant energy savings. Despite this concern, energy audits are not required and there is no accountability for claims of energy savings or use of the R-PACE program for bait-and-switch projects that save little to no energy. Expensive R-PACE loans have been provided to lower income households who may be eligible for free or lower cost home energy improvements through the federal weatherization program or other similar state and local programs.

Few Payment Options Create Default Risks

Another challenge to R-PACE borrowers, when their property taxes are not being paid through a mortgage escrow account, is that most Pennsylvania tax collection bureaus assess taxes annually, with the annual payment generally due in full by a specific date. R-PACE borrowers who have not adequately budgeted for this yearly expense and are unable to come up with lump-sum payments will face a default as well as penalties, additional interest charges, attorney's fees, and a possible tax sale or foreclosure. R-PACE programs do not offer loss mitigation assistance

Creating Foreclosure Risk and Problems Refinancing and Selling

Although R-PACE proponents often note that the total R-PACE assessment does not accelerate upon default, this does not protect homeowners from foreclosure because Pennsylvania tax sale laws generally require that an action to collect taxes must be filed if tax payments, including an annual assessment, go unpaid for a specified period. R-PACE loans can also make it difficult to refinance the regular mortgage or sell the home. The senior status of R-PACE liens can endanger the original mortgage holder's lien position. The super priority position of R-PACE liens is especially dangerous for seniors with reverse mortgages who may face mortgage foreclosure and loss of their homes merely by obtaining an R-PACE loan.

We urge you not to bring this dangerous product to Pennsylvania and to resist any efforts to amend SB 234 to include R-PACE.

Sincerely,

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