

CHAPTER 110: PACE PROGRAM REGULATIONS: LOAN UNDERWRITING STANDARDS, CONSUMER DISCLOSURE REQUIREMENTS, TERMS AND CONDITIONS OF PARTICIPATION AND QUALITY ASSURANCE SYSTEM

1. **Scope.** This Chapter applies to all PACE Loans and PACE Agreements entered into pursuant to a PACE Program, whether the PACE Program is administered by the Trust or its agent, or by a Municipality.
2. **Definitions.**
 - A. **Board.** “Board” shall mean the Efficiency Maine Trust Board established under 35-A M.R.S.A. § 10103 and 12 M.R.S.A. § 12004-G(10-c).
 - B. **Borrower.** “Borrower” means all of the owners (except any mortgage holder) of any Qualifying Property.
 - C. **BPI.** “BPI” means Building Performance Institute, Inc.
 - D. **Participating Energy Advisor.** “Participating Energy Advisor” means a person or entity who provides Energy Audits and is qualified to do so as evidenced by having a current certification by BPI (Building Performance Institute, Inc.) or such other standard as determined by the Director.
 - E. **Registered Vendor.** “Registered Vendor” means a contractor or installer of energy saving improvements who has registered with the Trust, and has provided the Trust with its name, contact information and location and with a copy of a certificate of insurance showing that it has at least \$500,000 in commercial general liability coverage and has workers’ compensation liability insurance as required by Maine law.
 - F. **Director.** “Director” means the Executive Director of Efficiency Maine Trust, appointed pursuant to 35-A M.R.S.A. § 10103.
 - G. **Energy Audit.** “Energy Audit” means an analysis conducted by a Participating Energy Advisor, using such procedures and standards as approved by the Trust, including any software program for this purpose designated by the Trust, of energy loss in a residential Qualifying Property to determine the savings-to-investment ratio of proposed Energy Saving Improvements.
 - H. **Energy Saving Improvement.** “Energy Saving Improvement” means an improvement to Qualifying Property that is new and permanently affixed to Qualifying Property and that:

- (1.) Will result in increased energy efficiency and substantially reduced energy use and:
 - (a) Meets or exceeds applicable United States Environmental Protection Agency and United States Department of Energy Star program or similar energy efficiency standards established or approved by the Trust; or
 - (b) Involves air sealing, insulating, and other energy efficiency improvements of residential, commercial or industrial property in a manner approved by the Trust; or
- (2.) Involves a Renewable Energy Installation or an electric thermal storage system that meets or exceeds standards established or approved by the Trust; and
- (3) Meets the applicable cost-effectiveness test as prescribed by the Trust.

I. Master Servicer. “Master Servicer” means one or more entities, including banks or credit unions or other financial institutions, that originate and service PACE Loans under a PACE Program or a Municipality or its agent that administers its PACE Program.

J. PACE Municipality. “PACE Municipality” shall mean a city or town that enacts a PACE Ordinance.

K. PACE Agreement. “PACE Agreement” means an agreement between the owner of Qualifying Property and the Trust or the Municipality that authorizes the creation of a PACE Mortgage on Qualifying Property and that is approved in writing by all owners of the Qualifying Property at the time of the PACE Agreement, other than mortgage holders.

L. PACE Assessment. “PACE Assessment” means an assessment made against Qualifying Property to repay a PACE Loan.

M. PACE District. “Pace District” means the area within which the Municipality establishes a PACE Program, which is all that area within the Municipality’s boundaries.

N. PACE Loan. “PACE Loan” means a loan, secured by a PACE Mortgage, made to the owner(s) of a Qualifying Property pursuant to a PACE Program to fund Energy Saving Improvements.

O. PACE Mortgage. “PACE Mortgage” means a mortgage securing a PACE Loan made pursuant to a PACE Program to fund Energy Saving Improvements on Qualifying Property.

P. PACE Ordinance. “PACE Ordinance” means an ordinance adopted by the legislative body of a municipality for the purpose of participating in a PACE Program.

Q. PACE Program. “PACE Program” means a program established under State statute by the Trust or a municipality under which property owners can finance Energy Savings Improvements on Qualifying Property.

R. Qualifying Property. “Qualifying Property” means real property located in the PACE District of the Municipality.

S. Renewable Energy Installation. “Renewable Energy Installation” means a fixture, product, system, device or interacting group of devices installed behind the meter at a qualifying property, or on contiguous property under common ownership, that produces energy or heat from renewable sources, including, but not limited to, photovoltaic systems, solar thermal systems, biomass systems, landfill gas to energy systems, geothermal systems, wind systems, wood pellet systems and any other systems eligible for funding under federal Qualified Energy Conservation Bonds or federal Clean Renewable Energy Bonds.

T. Trust. “Trust” means the Efficiency Maine Trust established in 35-A M.R.S.A. § 10103 and/or its agent(s), if any.

3. Underwriting Standards.

A. Requirements: The following are underwriting requirements for any PACE Loan (defined as a loan made pursuant to a “PACE Program”, as defined in Maine’s PACE Act (§ 10153(6)):

(1.) A PACE Loan must be secured by a PACE Mortgage on “Qualifying Property” (as defined in [Act §10153(7)])

(2.) The Qualifying Property securing a PACE Loan must be owned by the Borrower (defined, collectively, as all the owners (except any mortgage holder) of any Qualifying Property). Proof of ownership shall be obtained in the form of Title report;

(3.) The maximum amount of any PACE Loan shall be \$15,000;

(4.) Where the Qualifying Property that will secure the PACE Loan is Residential Property, the Borrower must demonstrate a Debt to Income Ratio of not more than 50%, which demonstration shall include but not be limited to:

- (A) records of any outstanding debt greater than \$3,000, including records of mortgage, car loans, and credit card debts,
- (B) records of income, including pay stubs from the most recent month and the most recent tax returns.

(5.) The term of the PACE Loan shall not exceed the Estimated Useful Life of the financed “Energy Saving Improvements” (as defined in [Act §10153(1)]);

(6.) All Energy Saving Improvements financed through the PACE Loan shall meet the Cost-Effectiveness test as prescribed by the Trust;

(7.) All Qualifying Property securing a PACE Loan must be:

(A) Current with respect to property taxes and sewer charges;

(B) Have no outstanding and unsatisfied tax or sewer liens

(C) Not be subject to a Reverse Mortgage Transaction (as defined in 9-A M.R.S.A. §8-103-1A(Y)); and

(D) Not be subject to a mortgage or other lien with which there is a recorded notice of default, foreclosure or delinquency that has not been cured, nor any unsatisfied judgment, mechanics, material men or architect lien;

(8.) All owners of Qualifying Property securing a PACE Loan must certify that there are no overdue payments on mortgages or other liens secured by such property; and

(9.) Escrows for PACE assessment payments may be employed when appropriate.

4. Consumer Disclosure Requirements.

A. Truth in Lending. A PACE agreement entered into pursuant to a PACE program must provide consumer disclosure consistent with the principles of truth in lending as specified in rules adopted by the trust. PACE mortgages shall not be subject to the Maine Consumer Credit Code, Article 8.

B. Consumer privacy. The provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999), and the applicable implementing federal regulations regarding the privacy of consumer information, apply to all consumer financial information obtained by the Trust or municipalities or their designees in implementing PACE programs under this chapter.

5. Terms and Conditions of Participation. The following terms and conditions govern the participation of Municipalities and property owners in a PACE Program funded by funds awarded to the State under the federal Energy Efficiency and Conservation Block Grant Program or by any other funds from the Efficiency Maine Trust for this purpose.

A. PACE Program Design, Implementation and Administration.

1. PACE Program Design. A PACE Program shall implement the following program design:

a. Schedule Energy Audit. The Owner of Qualifying Property in a PACE Municipality schedules an Energy Audit with a Participating Energy Advisor.

b. Energy Audit. A Participating Energy Advisor conducts an Energy Audit, performing initial testing and generating reports regarding proposed Energy Saving Improvements, their cost, and potential savings, and provides such reports, PACE Program information and PACE Loan pre-application form to Owner of Qualifying Property.

c. Pre-Approval. The Owner of Qualifying Property/Borrower contacts Master Servicer by telephone or online to complete pre-application form, and to obtain pre-approval of PACE Loan amount, term and interest rate for specified Energy Savings Improvements.

d. Final Approval. Central Servicer provides final loan approval subject to:

(1) Borrower obtaining actual written quotes from Registered Vendors for construction and/or installation of specified Energy Saving Improvements and providing quotes to the Master Servicer; and

(2) Master Servicer verifying ownership of Qualifying Property, obtaining credit report for Borrower, reviewing Borrower's debt-to-income ratio and determining that the Borrower meets the Underwriting Standards of Section 3.

e. Loan Origination; Initial Disbursement. Borrower identifies to Master Servicer the preferred branch office of a participating bank or credit union to be used for closing ("Closing Agent"). Master Servicer, upon making a final approval of Borrower's application for a PACE Loan, prepares PACE Agreement and PACE Mortgage/PACE Notice using forms prepared by the Trust and sends these to Closing Agent at the preferred branch office of a participating bank or credit union and notifies Borrower and Closing Agent of date of closing. The Borrower and Closing Agent then conduct a closing on the PACE Loan. After three-day rescission period and upon presentation of copy of signed contract with Certified Vendor (Contract) in amount of quote (Contract Amount) on a form prepared by the Trust to construct or install the Energy Saving

Improvements, the Trust or its agent issues a check through Closing Agent to Borrower in an amount equal to 30% of the Contract Amount to construct/install the Energy Saving Improvements.

f. Establishment of PACE Mortgage. Closing Agent mails the signed PACE Agreement and PACE Mortgage/PACE Notice to Master Servicer, which records PACE Mortgage/PACE Notice in appropriate county registry of deeds to create PACE Mortgage.

g. Construction/Installation. The Registered Vendor constructs and/or installs the Energy Saving Improvements specified in the Contract between the Borrower and the Registered Vendor.

h. Loan Origination – Final Disbursement. Upon receipt of notice from the Registered Vendor that construction and/or installation of the Energy Saving Improvement is complete, and upon receipt of signed lien waivers from all subcontractors and material men for the same, and, notice from the Participating Energy Advisor that it has conducted a test-out procedure verifying that the construction and/or installation of the Energy Saving Improvements meets BPI guidelines and recommendations, the Trust shall issue a check to the Borrower for the remaining amount of the PACE loan for construction and/or installation of the Energy Savings Improvement, which amount shall not exceed the estimated Contract Amount net of any rebates received from the Trust.

i. Loan Servicing. Master Servicer sends monthly PACE Assessments to Borrowers to be paid within thirty (30) days of PACE Assessment invoice. Where the Borrower has failed to timely pay its monthly PACE Assessment, the Master Servicer shall send a notice of delinquent payment and demand for payment, notifying the Borrower that interest of 10% per annum will be charged on delinquent payments. If a PACE Assessment remains unpaid for six (6) months after it becomes delinquent, the Master Service may institute collection proceedings through collection agencies and/or through institution of legal proceedings. Upon completion of PACE Loan repayment, the Master Servicer, or the Municipality if it is administering its PACE Program, shall record a discharge of the PACE Mortgage at the appropriate registry of deeds.

2. PACE Program Implementation.

a. The Trust shall select a Master Servicer through a competitive proposal process and shall contract with a Master Servicer, which may be one or more banks, credit unions or other financial institutions, or a Municipality may select and contract with a Master Servicer, which may be a bank or credit union with one or more offices in that Municipality, to provide the following services, or a Municipality or its agent may itself provide the following services:

(1) Loan Origination Services in B below.

(2) Loan Servicing Services in C below.

b. The Trust shall maintain and make publicly available a list of Participating Energy Advisors who may conduct Energy Audits of Qualifying Property at the request of the owner(s) of that Qualifying Property.

c. The Trust shall maintain a list of Registered Vendors who may construct and/or install Energy Savings Improvements under a PACE Program.

3. PACE Program Administration; Cost-Sharing. The Trust shall be responsible for the costs of administration of the PACE Program which costs may be included in and paid from the PACE assessments collected on each PACE loan in accordance with a fee schedule agreed to by the Trust, the Master Servicer, or the Closing Agent. A Municipality that adopts a PACE ordinance under which the Municipality elects to administer loan origination and master servicer functions itself shall be entitled to recover these costs on the same fee schedule as the Trust. Costs that exceed the fee schedule of the Trust shall be the responsibility of the municipality.

B. Establishment of PACE Mortgages

1. A Master Servicer shall provide the following services:

a. PACE Loan Origination

(1) Provide credit pre-approval of a specified amount in accordance with the Real Estate Settlement Procedures Act (RESPA).

(2) Accept and process PACE Loan applications received from:

(a) participating branch bank officers;

(b) participating credit unions; and

(c) online.

(3) Upon receipt of a complete application from the Borrower and an Energy Audit prepared by a Participating Energy Advisor, review credit, debt and income information provided by the Borrower and prepare a Good Faith Estimate (GFE) in accordance with RESPA, which the Master Servicer shall provide to the Borrower.

(4) Conduct a title search on the Qualifying Property that is the subject of the PACE Loan application.

(6) PACE Loan closing and disbursement:

(a) PACE Loan Closing

(i) Closings shall occur at a local bank branch or credit union or a municipal office.

(ii) The Master Servicer shall prepare the completed loan package for the Borrower to sign at closing, including but not limited to the PACE Agreement and PACE Mortgage/Notice of PACE Agreement.

(iii) There shall be a rescission period of three (3) days before the PACE Loan funds may be disbursed.

(iv) The Trust or its agent shall record appropriate documents at the proper registry of deeds to create the PACE Mortgage (notice of PACE Agreement).

(b) PACE Loan Disbursement

(i) Upon presenting the Closing Agent with a signed contract on a form approved by the Trust for the Energy Saving Improvement installation and/or construction entered into with a Registered Vendor, the Closing Agent will direct the Trust or its agent to issue a check in the amount of 30% of the Contract Price (meaning the price for the construction and/or installation of the Energy Savings Improvement as stated for in said contract with the Registered Vendor).

(ii) Upon successful completion of construction and/or installation of the Energy Saving Improvement by the Contractor and the Contractor's submittal of any lien waivers signed by any and all subcontractors and material men, the Master Servicer or the Trust shall issue a check to the customer in the amount of the remainder (70%) of the loan amount to the Borrower, who shall be responsible for paying the Contractor.

C. Collection of PACE Assessments

The Master Servicer shall:

1. Send monthly PACE Assessment statements for payment of the PACE Loan under the terms of the PACE Agreement and PACE Mortgage.

2. Send notices of nonpayment where the Borrower fails to make monthly payments of PACE Assessments.

3. If a PACE Assessment remains outstanding and unpaid for more than thirty (30) days, assess interest on the unpaid amount from that date forward at an interest rate to be established each year by the Trust.

D. Management of Federal Grant Funds

E. Data Collection. Data Required to:

(1) Quantify Carbon Savings

(2) Facilitate Access to and Eligibility for:

(a) Voluntary carbon markets,

(b) Federal grants for energy efficiency, and

(c) Other incentive programs that support energy savings improvements.

6. Quality Assurance System.

A. The Trust will institute and maintain requirements and a list of Participating Energy Advisors' and Registered Vendors.

B. If the construction and/or installation of Energy Savings Improvements under a PACE Program also is subject to any other Trust rebate or other financing program, it will be inspected and tested under the terms of that program.

C. The Trust will maintain a program to inspect construction and/or installation of Energy Saving Improvements under a PACE Program by an Participating Energy Advisor to determine that the improvements were properly constructed and/or installed and are operating properly. The percentage of completed projects financed through PACE loans shall exceed the "best practices" percentage established by the U.S. Environmental Protection Agency's Home Performance Program.

Authority: 5 M.R.S.A. § 12004-G(10-c); 35-A M.R.S.A. § 10105(5); 35-A M.R.S.A. § 10151, *et seq.*

BASIS STATEMENT

The basis of this rule is to establish underwriting standards and consumer disclosure requirements for PACE (Property Assessed Clean Energy) loans and PACE agreements with owners of qualifying property who are participating in PACE programs funded by funds awarded to the State under the federal Energy Efficiency and Conservation Block

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Grant Program or by other funds available for this purpose, and to establish terms and conditions and a quality assurance system for PACE programs, whether administered by Efficiency Maine Trust (or its agent) or by a municipality.