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Policy Framework for PACE Financing Programs

The following Policy Framework has been developed by the White House and the relevant agencies as a policy framework for Property Assessed Clean Energy (PACE) financing programs. Today, the Vice President is announcing support for the use of federal funds for pilot programs of PACE financing to overcome barriers for families who wish to invest in energy efficiency and renewable energy improvements.

The innovative PACE approach attaches the obligation to repay the cost of improvements to the property, not the individual borrower, creating a way to pay for the improvements if the property is sold. This Policy Framework provides important safeguards for the relevant parties, including homeowners and mortgage lenders. The Policy Framework applies to federal funding of PACE programs and also is designed to serve as a resource for state, local, and tribal governments who seek to carry out PACE activities without federal funding.

The Department of Energy (DOE) is announcing funding for model PACE projects, which will incorporate this Policy Framework's principles for PACE program design. Under the State Energy Program, DOE has received approximately $80 million of applications for PACE-type programs to provide upfront capital. Additional PACE programs are encouraged through a Funding Opportunity Announcement, released today, for competitive grants under the Energy Efficiency Conservation Block Grant Program. These pilot programs will be accompanied by a significant research effort, so that the federal government can assess the efficacy of PACE as a funding source for energy retrofits and evaluate the effectiveness of the homeowner and lender protections set forth in this Policy Framework.

The Promise of PACE Financing

By making energy efficiency investments easier, less expensive, and more effective, PACE can help to increase the amount invested in energy efficiency. Specifically, PACE programs streamline financing of energy efficiency investments in three key ways. First, property assessments provide a secure, well-established payback mechanism that will lead to lower borrowing costs. The security of the payback mechanism often makes it possible for PACE financing to be offered with no money down requirement. Second, the economies of scale from making PACE financing available to a large group of borrowers can reduce overhead and transaction costs. Finally, effective administration of PACE programs at the local-government level will create more consumer confidence in the economic value of energy efficiency investments.

PACE Financing Initiatives: Overview

Land-secured financing districts (also known as special tax or special assessment districts) are a familiar tool in municipal finance. In a typical assessment district a local government issues bonds to fund projects with a public purpose such as streetlights, sewer systems or underground utility lines. Property owners that benefit from the improvement then repay the bond through property assessments, secured by a property lien and paid as a part of the property taxes.

If appropriately designed and implemented, extension of this finance model to energy improvements may allow property owners to pay for efficient enhancements with expected monthly payments that are less than expected utility bill savings.

How it works

This local-government energy financing structure would allow property owners to "opt-in" to attach up to 100% of the cost of energy improvements to their property tax bill. In the event of nonpayment of the assessment, the local government has the ability to foreclose on the delinquent property in the same manner as for nonpayment of taxes, or it may choose to wait for another party to initiate foreclosure. Importantly, as a protection for mortgage lenders on the property, liability for the assessment in foreclosures should be limited to any amount in arrears at that time, and the full costs of the improvement are not accelerated or due in full. The assessment runs with the property at law and successor owners are responsible for remaining balances.

Tying payment to the property solves credit and collateral issues for energy efficiency and renewable energy loans, reduces up-front costs to a minimum payment or zero, and allows for both the payment and the value of the retrofit to be transferred from one owner to the next. Local governments should establish a reserve fund to backstop late assessment payments, helping assure that investors in energy efficiency and renewable energy loans are paid on time. The use of reserve funds also reduces risk to the first mortgage lender and other private lien-holders, because initial losses to those who fund energy efficient and renewable energy loans are paid out of the reserve fund. Municipalities could also share this risk with contractors through a variety of conditional contract mechanisms.

In certain settings, an alternative financing approach would be for homeowners to pay for energy improvement retrofits through their utility bills. There is value going forward in evaluating these different mechanisms and discovering where each may be most effective. Results may vary geographically or with the market role of local utilities.

Existing PACE Programs

PACE programs that are planned or underway include: Albuquerque, NM; Athens, OH; Austin, TX; Babylon, NY; Berkeley, CA (which pioneered the concept); Boulder, CO; Palm Desert, CA; San Diego, CA; San Francisco, CA; and Santa Fe, NM; and at the state level in California, Connecticut, Maryland, Oregon, Texas, Vermont, Virginia, and Wisconsin. If only 15 percent of residential property owners nationwide took advantage of clean energy community financing, the resulting emissions reductions would contribute 4 percent of the savings needed for the U.S. to reach 1990 emissions levels by 2020. Over time, with appropriate policy development that addresses the interests of the various stakeholders, including the definition of allowable energy efficiency and renewable energy investments, it may also be possible to extend the model to multifamily housing and commercial buildings.

Implementation: The Federal Role

As states and local governments have implemented PACE programs, they have begun to develop practices for homeowner and lender protection. Federal funding using ARRA resources provides an opportunity to encourage innovation and improvement in the PACE financing model. A federal role to encourage PACE pilot programs will facilitate the collection of data, objectively measure and evaluate the performance of PACE programs, and speed the adoption of more uniform and universal best practices that include robust and effective homeowner and lender protections.

Clear home improvement standards, accompanying federal and other public funds, will address the risk of substandard home improvements and improve overall contractor quality. For both homeowners and lenders, the programs should be structured to address risks that could arise given that property tax assessments under PACE usually take priority over private liens in the event of foreclosure. Where appropriate, conditions will be placed on DOE's ARRA funding to address these homeowner and lender concerns.

Research on Pilot Programs

PACE collaborations offer a unique opportunity for the federal government to coordinate and aggregate much-needed, program-specific data such as energy consumption and savings obtainable, investment cash flows achievable, effects on property valuation, risks associated with community-financed retrofit programs, and the effects of new homeowner and mortgage lender protections. Where possible, research can also assess benefits from PACE programs such as reductions to greenhouse gases and economic impacts on community spending and job creation. Utility bills from before and after a retrofit are crucial for measuring energy savings, and support from utilities will be important in providing this information, subject to appropriate privacy safeguards.

As an integral part of Federal support for pilot PACE programs, the Department of Energy will support substantial research about key aspects of PACE programs, including: the energy and financial returns of energy efficiency and renewable energy retrofits; the effectiveness of homeowner protections; and the effectiveness of safeguards for mortgage and energy lenders.

Funding

Under the State Energy Program, DOE has received approximately $80 million of applications that could potentially use a PACE financing structure, out of $3.2 billion in total funding. The Department of Energy is also issuing a Funding Opportunity Announcement of $454 million under its Competitive Energy Efficiency and Conservation Block Grant program. This "Retrofit Ramp-Up" program will pioneer innovative models, including PACE loans, for rolling out energy efficiency to hundreds of thousands of homes and businesses in a variety of communities. In the Funding Opportunity Announcement, DOE encourages applications for PACE programs, which would be implemented consistent with this Policy Framework and contribute to research efforts about the effectiveness of such programs.

Challenges

As discussed above, federal agencies can play an important role in developing and publicizing measures that address important homeowner and lender protection issues. The Office of Management and Budget will work with the National Economic Council and key federal agencies on additional guidance (not formal rulemaking) for federal grant programs that fund PACE programs. Because PACE programs are still quite new, such as the new federally-funded pilots, best practices may evolve rapidly, and so some aspects of today's Policy Framework may not apply in all situations.

Homeowner Protection

Effective consumer protection is a crucial first line of defense against defaults that would harm both homeowners and lenders. PACE programs should help assure that energy retrofits are designed to pay for themselves within a reasonable period, and that homeowners are protected against fraud or substandard work.

1. *Savings to Investment Ratio.* As has long been the case for DOE's single-family weatherization program, the "savings to investment ratio" for PACE program assessments should be greater than one. This "pay for itself" principle means that the expected average monthly utility savings to homeowners should be greater than the expected monthly increase in tax assessments due to the PACE energy efficiency or renewable energy

improvements. Improvements should be made where there is a positive net present value, so that expected total utility bill savings are estimated to be greater than expected total costs (principal plus interest). In some instances, tax credits or other subsidies are available to support investments. If so, then the present value of the expected savings to consumers should be greater than the present value of the increase in assessments once those subsidies are included.

2. *Financing Should be for High-Value Investments.* Financing should be limited to investments that have a high return in terms of energy efficiency gains. In some cases, investments can be limited to a set of projects that have well-documented efficiency gains for most houses in a climate zone, such as sealing ducts or installing insulation. In other cases, investments will be based on the results of an authorized energy audit that identifies the energy efficiency gains for a particular house for a particular retrofit. Ensuring that loans are made for these high-value investments will protect homebuyers and mortgage lenders, and maximize the impact of PACE on improving energy efficiency.

3. *Assuring that the Retrofit is Constructed as Intended.* First, the scope of the retrofit should be determined by a list of presumptively-efficient projects or based on an energy audit, conducted by a qualified auditor or inspector. Second, validly licensed contractors or installers should do the actual home improvements. Third, there should be an after-the-fact quality assurance program. Qualified raters should do reviews upon completion, for the portion of houses needed to assure program quality, to assure that correct work was performed and is up to standards. If the property owner or local government administering the contract is not satisfied with a retrofit or if the follow-up rating shows that the work was not completed in a commercially reasonable manner, the contractor should be required to fix the work. If that does not solve the problem, then just as with any construction project, payment to the contractor can be withheld until such a time as the work is done satisfactorily or the homeowner can seek other redress. In circumstances where a project is not completed to standards, the contractor should be disqualified from further work under the PACE program – a strong incentive to complete work correctly.

This approach provides important incentives and safeguards for all of the relevant parties. For homeowners, the "pay for itself" principle assures that the expected savings exceed the investment, and the protections afforded for proper projects and work address concerns about inappropriate or substandard work. For mortgage and other lenders, these safeguards reduce the risk that overly-expensive, substandard, or uneconomic projects will be undertaken, protecting the value of the house that serves as collateral for the loan.

Furthermore, PACE programs must comply with applicable federal and state consumer laws and include adequate disclosures to and training for homeowners participating in the program. For instance, local governments implementing PACE programs must disclose the risks to participating property owners, including risks related to the default and foreclosure that could result from failure to pay assessments. Along with training and certification standards to be established by DOE and the Department of Housing and Urban Development (HUD), effective anti-fraud measures should be implemented. To avoid "copy cat" programs that offer PACE-like programs without these protections, local, state and federal consumer protection enforcement agencies should target mortgage fraud scams and "copy cat" programs.

Lender and Borrower Protection

If poorly designed, PACE programs could increase risk to mortgage lenders, which in turn could lead to higher interest rates for homeowners. Because local property taxes usually take priority over private liens, including mortgages, mortgage lenders face an increased risk of non-payment if a PACE borrower becomes delinquent on payment.

Because of the importance of the housing finance market, and the need to understand and address any risks posed to homeowners and mortgage lenders, the federal government is supporting PACE loans at this time at the pilot and demonstration level. Federal agencies including DOE, HUD, and Treasury have worked together to understand how best to encourage energy efficiency and renewable energy loans while also creating effective rules and practices to prevent losses in the mortgage market. Over time, a variety of approaches might best address the need to ensure a well-functioning mortgage market by protecting the rights of pre-existing lien holders, perhaps including a national-level guarantee fund alongside or in place of local government-level reserve funds. Experience with pilot PACE programs can inform policy in the longer-term.

As noted earlier, effective consumer protection is a crucial first line of defense against default. The "pay for itself" test also helps lenders, because the long-term value of the house may well be improved by energy efficiency investments that make living in the house more affordable. Additional protections come from the year-by-year nature of the property tax lien if a borrower defaults. For instance, if a homeowner defaults on an eight-year assessment after two years, in most programs only any unpaid property taxes would be collected to cure the default, not the remaining six year balance. This benefit of PACE financing, which should be standard in all PACE programs, is that the entire amount financed will not be accelerated, understanding, however, that the additional tax burden may impact the property value upon default. Another important protection is that the scope of home efficiency enhancements paid through property taxes is limited – property taxes would not be expanded to uses other

than energy improvements to the home that have a savings-to-investment ratio of greater than one.

Beginning immediately, this Policy Framework supports additional measures to further limit risk to mortgage lenders:

1. *Assessment Reserve Fund.* A reserve fund should be established at the local-government level, to protect the energy investor against late payment or non-payment of the assessment. This reserve fund means that the value of mortgage lenders' collateral should not be reduced by any failure by the homeowner to pay the PACE assessment.

2. *Length of Time.* The length of time for a homeowner to repay the PACE assessments should not exceed the life expectancy of the energy efficient improvements.

3. *Size of Financing Relative to the House Value.* As a general matter, PACE assessments should not exceed a certain percentage of appraised value of the home, generally 10%.

4. *Clear title.* Applicants must prove they are the legal owners of a property, unanimous approval of property-holders is required, and the title should be clear of easements or subordination agreements that conflict with the assessment.

5. *PACE Financing only where no current default.* Participation in the program should not be allowed unless: (i) property taxes are current; (ii) no outstanding and unsatisfied tax liens are on the property; (iii) there are no notices of default or other evidence of property-based debt delinquency for the lesser of the past three years or the property owner's period of ownership; and (iv) the property is current on all mortgage debt.

6. *No Negative Equity Financing.* PACE loans to borrowers who are "underwater" – whose mortgage and other debt on the property is greater than the current value of the house – raise particular risks because such loans are especially likely to default with less than full payment to private lienholders PACE programs should require a current estimate of appraised value, and outstanding property-based debt cannot be less than the value of the property.

7. *Vulnerable Areas.* Local governments should be cautious in using the PACE model in areas experiencing large home price declines, where large numbers of "underwater" loans may exist. PACE programs in such areas should proceed only after careful attention to local real estate conditions and programmatic safeguards to avoid contributing to additional borrower defaults.

8. *Escrow.* To reduce the risk of non-payment of property assessments, homeowners should escrow payments for PACE programs in the common situations where they already escrow other property tax assessments.

Conclusion

As the innovative PACE programs proceed, state and local governments should work closely with federal agencies to collect and aggregate performance data on the efficacy of consumer and lender safeguards, as well as energy efficiency and renewable energy results, to ensure constant improvement and wide scale program success.

In sum, PACE programs have the potential to increase the accessibility and affordability of energy saving measures, consequently lowering energy bills to residents and reducing the environmental footprints of participating localities. If programs are not properly constructed, however, the programs could potentially create risk for homeowners and lenders. Adoption of best practices, including strong contracting standards in the selection of those doing the retrofits, will help deliver the type of market transformation we need to see retrofitting scale up and achieve our goals. Existing programs have taken steps to design property and project criteria for eligibility, as well as quality assurance measures, that mitigate risk without unnecessarily limiting accessibility. Going forward, reporting to the Department of Energy about the performance of these programs will be important as feedback to improve these innovative programs over time. PACE programs should be conformed and tied to well understood, national scale procedures that will improve the quality and quantity of retrofits, and reduce costs.