

The attached document is a “redline” comparison of the updated Program Guidelines, dated March 4, 2022, marked against the original Program Guidelines, dated April 22, 2021.

~~NYC Accelerator~~ ~~PACE Financing~~

~~PROGRAM GUIDELINES~~

~~NEW YORK CITY MAYOR'S OFFICE OF SUSTAINABILITY~~
~~NEW YORK CITY ENERGY EFFICIENCY CORPORATION~~

NYC Accelerator **PACE Financing**

Program Guidelines

New York City Mayor's Office of Climate & Environmental Justice
New York City Energy Efficiency Corporation

Original Release Date: April 22, 2021

Revised: March 4, 2022

v2.0 (Rev. 03-04-2022) ~~(Rev. 04-22-2021)~~

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1. — Executive Summary

NYC Accelerator Property Assessed Clean Energy (“PACE”) financing is a voluntary financing mechanism that allows property owners to borrow money to ~~make improvements to~~ improve their new or existing property ~~that to~~ reduce utility costs, energy consumption, and greenhouse gas emissions. Unlike conventional financing, loans provided through the ~~NYC Accelerator~~ PACE Financing Program (the “~~PACE~~ Program”) are repaid in installments through a charge on the subject property’s tax bill.

The ~~PACE~~ Program is a platform allowing qualified lenders to bring commercial PACE financing to their customers. Building owners seeking PACE financing should visit the ~~program~~ Program website, ~~located at~~ <https://www1.nyc.gov/site/nycaccelerator/resources/pace-page> (“Program Website”), to connect with a qualified lender. PACE lenders must use the online software application system that can be accessed through the Program Website to submit and certify all required application materials (~~“Online Application System”~~). ~~The PACE~~ (the “Program App.”). The Program is administered by New York City Energy Efficiency Corporation (NYCEEC) (the “Administrator”) on behalf of the City of New York (“City”) in close coordination with the New York City Mayor’s Office of Climate and Environmental Justice (“MOCEJ”).¹

These ~~program guidelines~~ (“Program Guidelines”) (“Guidelines”) have been developed by the Administrator and MOCEJ pursuant to the Program Rules (defined below) and replace the prior version of the Program Guidelines dated April 22, 2021. These Guidelines provide information on the ~~PACE~~ Program generally and describe the loan requirements, project approval requirements and application requirements for PACE financing in New York City. Many of the eligibility criteria for PACE financing in New York State are established by the New York State Energy Research and Development Authority (“NYSERDA”) in the NYSERDA commercial PACE financing guidance documents ~~“(in general, the “NYSERDA Guidance”). Thus, the NYSERDA.”)~~, which includes NYSERDA’s Municipal Sustainable Energy Loan Program - Commercial Property Assessed Clean Energy (PACE) Guidance ~~is referenced occasionally in Document, dated September 22, 2020 (the “NYSERDA General Guidance”). Pursuant to Section 9 and Paragraph 11 of Appendix A hereto, these Guidelines are subject to change at the discretion of the Administrator and MOCEJ. The most recent version of this document.~~ ~~The Guidelines~~, other ~~PACE~~ Program documents, and a link to the ~~Online Application System~~ Program App. can be found on the Program Website.

The legal foundations upon which the Program is based include (without limitation) the following laws and rules: Section 119-gg of the New York General Municipal Law; Chapter 30 of Title 11 of the New York City Administrative Code; and Chapter 58 of Title 19 of the Rules of the City of New York (the “Program Rules”).

2. — Qualified PACE Lenders

PACE loans ~~must~~ may only be originated by qualified PACE lenders (“Lenders”). Any entity seeking to become a Lender should review ~~Appendix B,~~ the Lender Request for Qualifications (“~~RFQ~~”) ~~form,~~ which is available at on the Program Website. As more fully described in the

¹ On or around February 1, 2022, the Mayor’s Office of Climate and Sustainability (MOC&S) was renamed and became the Mayor’s Office of Climate and Environmental Justice (MOCEJ).

RFQ, to become a Lender, a party must (1) meet the “Qualification Requirements” described in the RFQ, (2) enter into a Master Lender Agreement with the Administrator ~~and the City on the~~ (“Master Lender Agreement” or “MLA”), and (3) enter into a Master Transfer and Remittance Agreement with the Administrator, the City and the City’s tax lien securitization trust (“Master Transfer and Remittance Agreement”). ~~The current form that can be viewed~~ forms of the MLA and the Master Transfer and Remittance Agreement are available on the Program Website ~~(“Master Lender Agreement”). A, along with a list of current Lenders can be found on the Program Website.~~

3. ~~PACE~~ Loan Requirements

In addition to complying with the eligibility criteria for loans set forth in ~~section~~ Section 58-03 of ~~chapter 58 of Title 19 of the~~ Program Rules ~~of the City of New York~~, an applicant must demonstrate compliance with the criteria ~~listed~~ summarized in Table 1 ~~of these Guidelines below~~ to be eligible to receive PACE financing in New York City. Table 1 provides a summary of the main Program requirements, which are described in more detail later in these Guidelines.

Table 1: ~~PACE~~ Summary of Program Loan Requirements

1. The applicant for a PACE loan must be an Eligible Borrower.
- ~~1.2.~~ The subject property must be an Eligible Site ~~(as defined below).~~
- ~~2.3.~~ The PACE loan must fund ~~Energy Efficiency~~ Eligible Improvements ~~or Renewable Energy Systems (as defined below).~~
- ~~3.4.~~ All Energy Efficiency Improvements must be recommended by an Energy Audit; and all Renewable Energy Systems must be recommended by a Feasibility Study.
5. ~~The project~~ Projects that are classified as New Construction or a Major Renovation must either (a) have a Savings-to-Investment Ratio (SIR) of 1.0 or greater, or (b) only include improvements that are on NYSERDA’s list of “Pre-Qualified Energy Efficiency Improvements” (as described in Section V of the NYSERDA General Guidance) and that fit within the definition of Energy Efficiency Improvement or within the definition of Renewable Energy System.
- ~~4.6.~~ Projects not classified as New Construction or a Major Renovation must have a SIR of 1.0 or greater.
- ~~5.7.~~ The PACE loan term must be less than or equal to the weighted average useful life of the improvements, measures or systems financed.
8. ~~All~~ The PACE loan must be consistent with the other Required Loan Features described below.
- ~~6.9.~~ Consent must be obtained from all holders of mortgages or deeds of trust on the subject property ~~must provide consent to the PACE loan and~~ and, in cases where the ~~terms thereof~~ PACE applicant holds a leasehold interest in the property, from the lessor/property owner.
- ~~7.10.~~ ~~All~~ In general, all required PACE loan application materials must be submitted to the Administrator by the Lender through the ~~Online Application System.~~ Program App.


~~Site~~ Borrower Eligibility

~~An~~ As more fully set forth in the form MLA, to be an “Eligible Borrower,” a PACE applicant must:

- Not be directly or indirectly affiliated with, owned or controlled by the Lender;
- Be either the owner of record of an Eligible Site (defined below), or must have a leasehold interest in an Eligible Site established by an “Eligible Lease” meeting the criteria described below;
- Not be delinquent in the payment of any taxes, civil penalties, or other debt to the City, or in any water or sewer charges to the New York City Water Board or the City’s Department of Environmental Protection at the time the PACE loan is made; and
- Not be a “Prohibited Person” (as defined in the RFQ).²

Site Eligibility

As more fully set forth in the form MLA, an “Eligible Site” is a property ~~that meets~~ meeting all of the following criteria:

- ~~• The property is owned in fee simple by the PACE applicant.~~
- ~~• The property must be an existing building.~~
- An Eligible Borrower is the owner of record of the property, or in the case of a lease, an Eligible Borrower has an “Eligible Lease” meeting the following criteria:
 - The borrower, as lessee, must have entered into a long-term lease agreement with the property owner under which the remaining term of the lease (not including extensions) must be for at least the term of the PACE loan;
 - To constitute “real property” under the Program Rules, the borrower’s leasehold interest in the property must have been recorded (or must be eligible for recording) in the real property records of the property with the Office of the City Register or the Richmond County Clerk’s Office;
 - Either the borrower/lessee or the property owner must appear in the systems and records maintained by the City’s Department of Finance (“DOF”) as the party designated to receive the property tax bills for the lot (i.e., the “statement of account”); and
 - The property conveyed under the lease (i.e., the “leased premises”) must constitute the entirety of the lot, and there must be a single borough, block and lot number (BBL) for the property conveyed under the lease.
- The property must be located in one of the five boroughs of New York City.
- The property must not be a one- or two-unit residential building.
-  For clarity, types of eligible properties include:
 - Commercial, industrial, and office properties;
 - Properties owned by tax-exempt organizations including religious institutions;
 - Multifamily residential properties (three units or more); and

² As defined in the RFQ, the term “Prohibited Person” means any person or entity (a) named on the “Specially Designated Nationals and Blocked Persons” list maintained by the U.S. Department of the Treasury’s Office of Foreign Assets Control at its official website; (b) that is otherwise the target of any economic sanctions program currently administered by any federal governmental authority; (c) who has in the prior three (3) years violated, is currently in violation of, or is known to be under investigation by any governmental authority for any potential violation of the Bank Secrecy Act, the USA PATRIOT Act, or any other related or similar U.S. law, rule or regulation governing money laundering activities; (d) with whom a U.S. person may not otherwise conduct business by prohibition of applicable law; or (e) that is owned or controlled by, acting for or on behalf of, or affiliated with any person or entity identified in clauses (a) - (d) of this definition.

- o Residential condominium units currently owned in common by a commercial entity, unless and until such time as such a unit is sold.³

Mortgage Holder Consent

All holders of mortgages or deeds of trust on the property benefitted by the PACE loan must provide consent to the PACE loan and the terms thereof on the [mortgage holder consent form available on the Program Website](#) (“Mortgage Holder Consent”). Other forms of consent may be acceptable upon the Administrator’s approval.

- ~~The PACE applicant must not owe any taxes, civil penalties, or other debt to the City.~~

Property Owner/Lessor Consent

In cases where an Eligible Borrower holds a leasehold interest in the property with an “Eligible Lease”, the property owner/lessor must provide consent to the PACE loan on the [owner consent form available on the Program Website](#) (“Owner Consent”). Other forms of consent may be acceptable upon the Administrator’s approval.

Eligible Improvements

The ~~Each~~ PACE loan must ~~fund~~ be used to finance the costs of Energy Efficiency Improvements and/or Renewable Energy Systems, ~~either or both of which constitute “Eligible Improvements”.~~

- “Energy Efficiency Improvement”

- ~~Any~~ means any improvement to real property, whether as a component of the new construction of a building or as the renovation or retrofitting of ~~a~~ an existing building ~~that is intended~~, to reduce energy consumption, ~~(such as window or door replacement, lighting, caulking, weatherstripping, air sealing, insulation, and heating and cooling system upgrades, and similar improvements).~~ This term does not include lighting measures or other household appliances that are not permanently fixed to the real property.

- “Renewable Energy System”

- ~~An~~ means an energy generating system for the generation of electric or thermal energy, to be used primarily at the real property where such system is installed, except when the owner of real property is a commercial entity, by means of a solar thermal, solar photovoltaic, wind, geothermal, anaerobic digester gas-to-electricity ~~systems~~ system, fuel cell ~~technologies~~ technology, or other renewable energy technology approved by NYSERDA, not including the combustion or pyrolysis of solid waste. Please refer to [Section VI of the NYSERDA General Guidance](#) and to other applicable NYSERDA Guidance for additional information.

Energy Audits and Renewable Energy Feasibility Studies

[Energy Efficiency Improvements](#): If the proposed project includes an Energy Efficiency Improvement, the PACE applicant must provide an ~~ASHRAE Level 2 or ASHRAE Level 3~~ Energy Audit. ~~The~~ that meets all applicable NYSERDA requirements, including those specified

³ It is expected that further guidance will be provided on the topic of condominiums in due course.

in the NYSERDA Guidance. This includes a requirement that the Energy Audit ~~must~~ be ~~provided~~performed by a contractor that meets the criteria contained in Section III of the NYSERDA General Guidance (“Certified Energy Audit Contractor”).

- On a case-by-case basis, affordable multifamily properties that are subject to, or will become subject to, a regulatory agreement with the NYC Department of Housing Preservation & Development (~~“HPD”~~) may obtain an Integrated Physical Needs Assessment (IPNA) in lieu of an ASHRAE Level 2 or ASHRAE Level 3 Energy Audit.

Renewable Energy Systems: If the proposed project includes a Renewable Energy System, the PACE applicant must provide a Feasibility Study. The Feasibility Study must be provided by a contractor that meets the criteria ~~contained in the~~described in Section VIII of the NYSERDA General Guidance and other applicable NYSERDA Guidance (“Certified Feasibility Study Contractor”).

The Energy Audit or Renewable Energy Feasibility Study must not have been completed ~~no~~ more than 2 years prior to the ~~earlier of the~~ date on which the PACE financing agreement between the ~~borrower~~Eligible Borrower and ~~lender~~Lender is signed, or the date ~~on which project construction of the project is~~ commenced, whichever is earlier. An Energy Audit that is prepared within such 2-year time frame and in accordance with New York City Local Law No. 87 for the year 2009 is an acceptable Energy Audit for the purposes of PACE financing.

Savings-to-Investment Ratio (SIR)

~~The project~~All projects financed under the Program that do not constitute a Major Renovation (defined below), nor New Construction (defined below), must have a Savings-to-Investment Ratio (“SIR”) of 1.0 or greater.⁴ The SIR should be calculated in the Technical Certification (see below).

The SIR is defined as the ratio between the present value of the total estimated benefits of a project over its lifetime (including energy savings and other project related benefits) and the total eligible construction and other required costs that are part of the PACE financing. ~~Please~~For additional details, please refer to Section V of the NYSERDA General Guidance and the NYSERDA Guidance document entitled Guidance for additional details Calculating a Cost Benefit Ratio (CBR), Version 4, dated June 8, 2018.

Application of the SIR test in the context of all projects involving a Major Renovation or New Construction is discussed below in Section 4.

Required Loan ~~Term~~ Features

The following additional requirements apply to each PACE loan made under the Program. When developing the loan terms and conditions and the loan repayment or amortization schedule (each, a “PACE Charge Payment Schedule”), Lenders should be mindful of the following requirements.

⁴ The terms “Savings-to-Investment Ratio” and “SIR” are used in these Guidelines in the interest of seeking to be generally consistent with standard industry terminology and usage. Such terms are intended to mean the same thing as the terms “Cost Benefit Ratio” and “CBR” as used in the NYSERDA Guidance.

- The PACE loan term must be less than or equal to the weighted average useful life of the improvements, measures or systems financed. The weighted average useful life of the improvements, measures or systems financed should be calculated in the ~~Project~~ Technical Certification (see below).
- 100% of the loan amount must be disbursed at closing or 100% of the loan amount must otherwise be considered to have been borrowed and outstanding as of the closing date. If there is a construction period, the proceeds of the loan can be held in escrow (or under some other similar arrangement) and the Eligible Borrower can then draw down on the loan as construction progresses.
- Lenders may allow for periods, within the loan term, during which only payments of interest are due from the Eligible Borrower (e.g., during construction). Lenders may also permit the capitalization of interest during the construction period (in general, however, interest should not capitalize for a period that exceeds the construction period).
- Repayment of the loan cannot be accelerated upon the occurrence of an event of default or any other event, and the obligation to repay the loan stays with the subject property regardless of a change in ownership.
- Each PACE loan must be made for a fixed rate of interest.
- If an Eligible Borrower is an individual, the original principal amount of the loan (not including interest) must not exceed the lesser of (a) 10% of the appraised value of the subject property, or (b) the eligible project costs that may be financed with the PACE loan in accordance with applicable requirements.

When developing their PACE Charge Payment Schedules, Lenders should ensure that such schedules are consistent with all applicable Program requirements, including (without limitation) the relevant provisions of these Guidelines as well as the applicable terms and conditions set forth in the Master Lender Agreement and the Collection Agreement. As more fully detailed in the MLA, in the course of reviewing each proposed PACE loan, the Administrator expects to review the financing documents, including (without limitation) the financing agreement with the Eligible Borrower, and will receive assurances from the Lender, to verify that the applicable Program requirements are properly memorialized in those documents.

Retroactive PACE Financing

A completed project may receive PACE financing provided that it satisfies all applicable requirements and has been completed after the later of: May 19, 2019, or 3 years prior to the date on which the PACE financing agreement between the ~~borrower~~ Eligible Borrower and ~~lender~~ Lender is signed. For any PACE financing provided retroactively, the maximum term of the financing will be reduced to account for any of the improvements, measures or systems' useful life that elapsed between the time of project completion and the date on which the PACE financing agreement between the ~~borrower~~ Eligible Borrower and ~~lender~~ Lender is signed.

~~Mortgage Holder Consent~~

~~All holders of mortgages or deeds of trust on the property benefitted by the PACE loan must provide consent to the PACE loan and the terms thereof on the form of consent available on the Program Website ("Mortgage Holder Consent"). Other forms of consent may be acceptable upon the Administrator's approval.~~

Complete PACE Application

In general, Lenders must provide all required application materials on behalf of each PACE [loan applicant](#) using the ~~Online Application~~ [Program App](#).

Environmental Justice

A goal of the City's Climate Mobilization Act is "to ensure equitable investment in environmental justice communities".⁵ As such, MOCEJ and Administrator strongly encourage Lenders to offer PACE loans to Eligible Borrowers in environmental justice communities.

4. New Construction and Major Renovations

All Electric Building Requirements

If a project involves either (a) an existing building that will undergo a major retrofit (a/k/a "gut renovation") that fits within the definition below for "Major Renovation", or (b) involves New Construction (defined below), then the project must entail the design, development and construction of an All Electric Building (defined below) in order for it to be eligible for financing under the Program.

Notwithstanding the foregoing, if a given project has been or is to be undertaken in one of the following two types of properties, then (with the approval of the Administrator and MOCEJ) such project may be exempted from the All Electric Building requirement described above:

- (1) An Eligible Site that is subject to a regulatory agreement with HPD, the NYC Housing Development Corporation and/or the New York State Division of Housing and Community Renewal, or
- (2) An Eligible Site with respect to which HPD, the NYC Housing Development Corporation and/or the New York State Division of Housing and Community Renewal has issued a commitment letter to enter into such a regulatory agreement.

Definitions of "Major Renovation" and "New Construction"

As used in these Guidelines, the term "Major Renovation" means any renovation, retrofit or other capital improvement project involving construction or other similar physical work in an existing building or other existing structure, where (a) pursuant to Buildings Bulletin 2016-012 (issued May 18, 2016 by the City's Department of Buildings), such construction or other work has or will cause the floor surface area of such building or structure to be increased by greater than 110%; and (b) in accordance with applicable law and pursuant to such Buildings Bulletin 2016-012, an "Alteration 1" (a/k/a "Alt 1") permit has been or will need to be obtained from the City's Department of Buildings.

As used in these Guidelines, the term "New Construction" means any project for which, in accordance with applicable law, a "New Building" permit has been or will need to be obtained from the City's Department of Buildings.

⁵ See Section 4 of Local Law 97 of 2019.

Definition of “All Electric Building”

As used in these Guidelines, the term “All Electric Building” means, with respect to any given building or other structure (whether now existing or that is to be constructed in the future), such building or structure is designed, engineered, developed, constructed, operated and maintained such that no device, machinery, equipment, components, systems or elements, if installed or used in such building or structure, would cause or otherwise involve any type of combustion within or upon such building or structure of any substance that emits 25 kilograms or more of carbon dioxide per million British thermal units of energy (as determined by the United States energy information administration); provided, that such emissions prohibitions shall not apply to any of the following:

- (1) Any device installed or used in such building or structure that (a) has no connection to any building’s gas supply line or fuel oil piping system, (b) is used on an intermittent basis, and (c) is not used to supply any building (or any portion thereof) with heat or hot water;
- (2) Any building or structure in which the combustion within or upon such building or structure of a substance that emits 25 kg or more of carbon dioxide per million British thermal units of energy (as determined by the United States energy information administration) is necessary (a) for a manufacturing use or purpose; (b) for the operation of a laboratory, laundromat, hospital, crematorium, commercial kitchen as defined in section 602 of the New York City fire code; or (c) to provide emergency or standby power; in any case to the extent necessary for, and in the space occupied by such use or purpose; or
- (3) Any building or structure in which the combustion within or upon such building or structure of a substance that emits 25 kg or more of carbon dioxide per million British thermal units of energy (as determined by the United States energy information administration) is for any use allowed by rule of the City’s Department of Buildings, to the extent necessary for, and in the space occupied by such use or purpose.

Eligible Costs for New Construction and Major Renovations

If the proposed project involves New Construction or a Major Renovation, then the PACE loan may only fund the costs of Eligible Improvements, the costs of Energy Audits and/or Renewable Energy Feasibility Studies, and related eligible soft costs, and in addition the PACE loan cannot exceed 25% of the total project costs (excluding site acquisition costs).

Cost Effectiveness for Major Renovations and New Construction

If a project financed under the Program involves a Major Renovation or New Construction, then either (a) the project must have a SIR of 1.0 or greater; or (b) all the improvements and measures that are part of the project must be included on NYSERDA’s list of “Pre-Qualified Energy Efficiency Improvements” (as described in Section V of the NYSERDA General Guidance) and must fit within the definition of Energy Efficiency Improvement, or must fit within the definition of Renewable Energy System.

~~4.~~ Energy Audits for New Construction and Major Renovations

If the proposed project involves New Construction or a Major Renovation, then the PACE applicant must provide an Energy Audit for the entire building prepared by a Certified Energy Audit Contractor, and that meets all applicable NYSERDA requirements, including those specified in the NYESRDA Guidance.⁶

5. Certifications

Lender Certification

For each project, the Lender must certify to the Administrator and the City that it continues to satisfy and comply with all of the terms, covenants, conditions, obligations and representations and warranties, made in the Master Lender Agreement. Lenders must submit such certification (each, a Project Lender Certification) using the ~~most recent~~ form ~~set forth in~~ attached to the Master Lender Agreement MLA to which they are a party.

Technical Certification

For each project, a Technical Certification must be certified to the Administrator and the City by a Certified Energy Audit Contractor or Certified Feasibility Study Contractor. ~~The~~ In general, the Technical Certification ~~may~~ should be certified by the same contractor that provided the Energy Audit or Feasibility Study. The contractor must use the form available on the Program Website.

The Technical Certification requires the following:

- Scope of Work Fields
 - An itemized description of each improvement, measure and system in the project as it appears in the final construction bid or construction contract, including quantity, cost and other relevant details.
- Technical Fields
 - Identify where a certain improvement, measure or system corresponds to ~~a~~ an improvement, measure or system recommended by the Energy Audit or Feasibility Study provided.
 - For Energy Efficiency Improvements, confirm that the improvements have been determined to be “appropriate” and identify where in the Energy Audit such determination is described
 - For Renewable Energy Systems, confirm that the system has been determined to be “feasible” and identify where in the Feasibility Study such determination is described
 - For Energy Efficiency Improvements and Renewable Energy Systems, assign a technology name from a dropdown list for data tracking.
 - State useful life (in years) for each improvement, measure and system.
 - ~~Develop~~ Input the projected energy cost savings by fuel type for each improvement, measure and system.
- Financing Fields

⁶ Under Section II of the NYSERDA General Guidance, Energy Audits performed for a New Construction or Major Renovation project should entail an audit of the whole-building, where practicable.

- ~~Sum~~Provide the estimated ~~total~~ energy cost savings for the project.
- ~~Calculate~~Input the weighted average useful life of all improvements, measures or systems to be implemented as part of the project (weighted by the projected greenhouse gas emissions savings, for existing buildings; and weighted by the costs of the improvement, measure ~~cost~~, or system, for New Construction or Major Renovation).
- Provide documentation/calculation supporting the additional savings.
- The financing costs must be equal to those shown in the loan documents.
- ~~Calculate the CBR to be 1.0 or greater.~~
- Confirm that the project is “cost effective” and calculate the SIR to be 1.0 or greater (or, if applicable, demonstrate that all the improvements, measures and systems that are part of the project are included on NYSERDA’s list of “Pre-Qualified Energy Efficiency Improvements” (as defined in the NYSERDA Guidance) or fit within the definition of Renewable Energy System.
- Local Law No. 97 Fields
 - ~~Develop~~Input the gross floor areas to determine the greenhouse gas emissions savings for the project.
 - ~~Show the projected savings resulting from civil penalties that would not be incurred under Local Law No. 97 for the year 2019 for the project.~~

In evaluating the technical and engineering merits of each proposed project, the Administrator (or its consultants) expect to carefully review the Energy Audit and/or Feasibility Study, the Technical Certification and the related “Technical Certification Workbook”. In connection with this review, additional backup and/or supplemental documentation and/or information will be required to substantiate the underlying data and other information provided in the Energy Audit, the Feasibility Study, the Technical Certification and/or the Technical Certification Workbook (as the case may be). A supplemental technical guidance document with more details on these requirements is available on the Program Website.

Borrower Acknowledgment

Certain risks are inherent in energy efficiency and renewable energy projects, such as the risk that the project (even if completed as designed, on time and on budget) may nonetheless end up resulting in smaller energy and cost savings than originally expected. In general, the Eligible Borrower bears these risks. As such, for each project the Lender should seek to ensure that the Eligible Borrower understands these risks and has the opportunity to ask questions. Each Lender will then be responsible for having the Eligible Borrower review and sign a Truth-in-PACE-Lending Acknowledgment or “TIPLA” and delivering the Eligible Borrower’s signed TIPLA to the Administrator and the City prior to closing the PACE loan. Lenders must use the form of TIPLA available on the Program Website.

6. PACE Application Process

The following section is a reference for Lenders seeking to originate a PACE loan ~~for~~to an Eligible Borrower for a project at an Eligible Site.

Table 2: ~~PACE~~ Program Loan Closing Timeline

↓	Phase 1:	Intake
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●	Defined Status:	Proposed Project
↓	Phase 2:	Data Gathering
●	Defined Status:	Approved Project
↓	Phase 3:	Documentation
●	Defined Status:	Effective Project

Phase 1: Intake

Description

A Lender creates a new project by completing the “Intake” fields in the ~~Online Application System~~ [Program App.](#)

Process

Only Lenders can access the ~~Online Application System~~ [Program App.](#) Lenders may develop their own electronic or paper application forms for their customers in order to collect the information required for the intake phase.

To complete the intake fields in the ~~Online Application System~~ [Program App.:](#)

- Navigate to the “Projects” tab and select “New.”
- Input project-related data. Fields marked with a red asterisk are required.
- Select “Save” at the bottom of the page to save the record.
- ~~NYCEEC will be notified that a~~ [The Program App. should then automatically notify the Administrator that the](#) project has been generated and requires preliminary approval.

[By properly completing all such intake fields and providing other information or documents requested by Administrator \(if any\), a Lender will have submitted the “preliminary application” for the project.](#) The Administrator will [then](#) assess the intake fields [\(and if applicable, the other information or documents requested\)](#) to ~~ensure~~ [verify](#) that the subject property is an Eligible Site [and that the PACE applicant is an Eligible Borrower](#). Lenders are not required to submit scope of work documentation during the intake phase, but they must submit a brief narrative description of the project. [In assessing whether a PACE applicant is an Eligible Borrower and whether a property is an Eligible Site, the Administrator \(or its consultants\) may request additional information and/or documentation from the Lender.](#)

If the information provided for a new project [demonstrates that the property](#) meets the criteria for an Eligible Site [and the borrower meets the criteria for an Eligible Borrower](#), the Administrator will promptly provide a preliminary approval ~~through the Online Application System~~.

Defined Status: Proposed Project

A Proposed Project is a project for which a record has been created in the ~~Online Application System~~ [Program App.](#) and which has received preliminary approval. Once the status of a project has become a “Proposed Project,” the Lender will ~~be notified~~ [receive a notification from Administrator](#) to proceed with the [full](#) application.

Phase 2: Data Gathering

Description

A Lender must complete all the required fields in the ~~Online Application System~~ [Program App](#).

Process

For a Proposed Project in the data gathering phase, a Lender must provide all information and documentation required by these Guidelines. ~~All fields are described in the Online Application System~~ [and the Master Lender Agreement to which such Lender is a party. As applicable, such information and documents should be provided through the Program App.](#)

Defined Status: Approved Project

~~#As more fully described in the MLA, if~~ a Proposed Project meets the ~~PAGE~~ Program Loan Requirements ([Table 1](#)), the Administrator will notify the Lender and the Project will [then](#) be referred to as an Approved Project.

Phase 3: Documentation

Description

A Collection Agreement is signed by the Lender and countersigned by ~~NYCEEC~~ [the Administrator](#) and the City, and written notice of the PACE loan is publicly recorded. Required documents may be downloaded from the Program Website.

Process

Financing Agreement

The Lender must provide a copy of its PACE financing agreement with the borrower as part of the application.

Collection Agreement

For each PACE loan, a Collection Agreement must be executed amongst the borrower, Lender, ~~NYCEEC~~ [the Administrator](#) and the City. The Collection Agreement memorializes the obligations of the above parties in the billing, collection and enforcement of Program Charges as defined in the Billing and Collection section below.

Master Transfer and Remittance Agreement

[Each Lender must enter into a Master Transfer and Remittance Agreement with the Administrator, the City and the City's trust for tax lien securitizations. The Master Transfer and Remittance Agreement sets forth the process and terms by which each delinquent PACE Charge payment, after it becomes a "PACE Charge Lien", may be sold by the applicable Lender to the City's tax lien securitization trust so that such trust may enforce and collect on such lien as the Lender's designated agent. Each Lender's right to sell such PACE Charge Liens will, however, be applicable only to the extent the City itself is authorized to sell or transfer its own tax liens to the trust.⁷](#)

Notice

Following the making of the loan, a Notice of the PACE loan obligation [\(the "PACE Loan Notice"\)](#) will be recorded in the land records of the subject property either in the Office of the

⁷ [It is the understanding of the Administrator and MOCEJ that the City's authority to sell or transfer tax liens to the tax lien securitization trust expired on February 28, 2022.](#)

City Register or in the Richmond County Clerk's Office, documenting that the subject property is participating in the ~~PACE~~-Program.- Upon repayment in full of the PACE loan, a Notice will be recorded in such land records documenting that the PACE loan obligation has been satisfied.

Closing Checklist

A form of loan closing checklist, designed to be used in connection with the development and closing of PACE loans under the Program, will be made available on the Program Website.

Defined Status: Effective Project

An Effective Project is an Approved Project for which the Collection Agreement has been fully executed and for which ~~a~~the PACE Loan Notice has been recorded. Funds for an Effective Project may be disbursed according to the financing agreement between the Lender and borrower.

~~6.~~7. Processes Following the Making of a PACE Loan

Construction Process

When a Lender submits their Lender Certification for a given project, the Lender will be required to identify an outside-date by which the project is expected to be completed. It will be the Lender's responsibility to ensure that the project is then completed by the date that is the first anniversary of such expected completion date (the "Required Completion Date").

Upon construction completion, and in any case by the Required Completion Date, the Lender must provide to the Administrator:

- (1) ~~a certificate~~A Certificate of ~~completion~~Completion attesting that construction of the project has been completed, (the "Certificate of Completion").
- (2) ~~an~~An updated PACE Loan amortization schedule, (if applicable), and
- (3) ~~an~~An updated Technical Certification, concerning the completed project (the "Technical Certificate of Completion").

~~A~~

The form of certificate of completion is Certificate of Completion and form of Technical Certificate of Completion are both available on the Program Website. Other forms ~~of completion certificates~~ may be acceptable upon the Administrator's approval.

Billing and Collection

~~Billing for Program Charges will begin only after the Lender has provided the documentation listed above to the Administrator to verify that the project has been completed.~~

As more fully set forth in the Collection Agreement, ~~the City's Department of Finance ("DOF") collects certain City charges such as~~ real property taxes, and fees ~~for water usage and other obligations~~ owed by the owner of a real property ~~via charges to the City~~ ("City Charges") appear on the property tax bill or "statement of account-of" for such real property. Charges ~~for on a property that benefits from a PACE loan made under~~ the ~~PACE~~-Program (~~"Program Charges"~~each, a "PACE Charge") will be billed as a separate line item on ~~the~~such statement of account for the real property benefited by the PACE loan.

~~Program~~As dictated by the PACE Charge Payment Schedule to be provided by the Lender pursuant to the Master Lender Agreement and the Collection Agreement, billing for PACE Charges may begin at any time after a PACE loan closes. After a given loan closes, the Administrator will instruct DOF to place the appropriate PACE Charge on the subject property's next statement of account. Thus, it is expected that on-bill charges will begin to appear on the property tax statements shortly after closing, even if the amounts then due in respect of such charges are zero (as in the case where loan repayments do not start until construction is complete or some other date after closing).

For periods during which a given PACE Charge Payment Schedule states that principal and/or interest payments are to be made by the borrower, such PACE Charges will be due semi-annually, on January 1 and July 1 of each year. The borrower must pay such ~~Program~~PACE Charges to DOF in the same manner as City Charges. If a borrower fails to pay a ~~Program~~PACE Charge when due, such ~~Program~~PACE Charge will be subject to the provisions of chapter 3 of title 11 of the New York City Administrative Code in the same manner as would an outstanding City Charge that is similarly-situated to the outstanding ~~Program~~PACE Charge.

If and when borrowers pay their PACE Charges, such payments will be collected by DOF and then disbursed to a single segregated bank account maintained by the Administrator for the benefit of the Lenders (the "Collection Account"). Administrator, acting in its capacity as the agent designated by the Lenders under their Master Lender Agreements ("Paying Agent"), will then cause PACE Charge collections received into the Collection Account to be disbursed to the Lenders in accordance with the applicable Collection Agreements. Administrator may retain a qualified third-party to assist Administrator in its duties as Paying Agent.

Mortgage Recording Taxes

Under the Program documents, the PACE Loan Notice is the only instrument that should be recorded in the City's real property records in connection with a given PACE loan. It is Administrator's understanding that a lien should not be created merely from the filing of such PACE Loan Notice as a "Sundry Miscellaneous" document with DOF's Office of the City Register. Accordingly, it is understood by Administrator that a charge related to the mortgage recording tax should not be due in connection with a properly filed PACE Loan Notice.

Measurement & Verification

All properties that receive a PACE Loan are required to provide annual measurement and verification ("M&V") reporting to ~~NYCEEG~~the Administrator. New York City Benchmarking Law (N.Y.C. Administrative Code §§28-309.1 et seq.) generally requires buildings of 25,000 square feet or greater to submit annual benchmarking reports to the City using *Energy Star Portfolio Manager*.

- For buildings covered under the City's Benchmarking Law, the property owner must share read-only access to the subject property's *Portfolio Manager* reports with ~~NYCEEG~~the Administrator for five years following project completion.
- For buildings that do not already provide annual reporting through the City's Benchmarking Law, the property owner must benchmark their property using *Energy Star Portfolio Manager* and share read-only access to the subject property's *Portfolio Manager* reports with ~~NYCEEG~~the Administrator for five years following project completion.

- ~~7.~~ By electing to participate in the Program, each Eligible Borrower will agree to provide physical access to the Administrator or its agents/representatives to the improvements, measures, and systems financed through the Program for M&V purposes, for up to two (2) years following project implementation.

Loan Sales and Transfers

After a Lender has closed a PACE loan, the Lender may sell or transfer the loan to another entity at any time so long as the requirements set forth in the Master Lender Agreement are satisfied. Among other requirements, the transferee of the loan must be a “Qualified Transferee” (defined in the MLA) and within five business days of the transfer a signed Assignment and Assumption Agreement between the lender/assignor and the transferee, along with certain other documents, must be delivered to the Administrator. Lenders must use the form of Assignment and Assumption Agreement available on the Program Website.

8. Program Fees

~~The PACE Program is designed to be a self-sustaining program administered on behalf of the City. As such, all projects are subject to fees following the making of a PACE loan and/or permanent servicing fees. Fees may be capitalized into the PACE Loan and paid as of the date that the PACE Loan has been made. Note that fees are subject to change; participation in the PACE Program will be subject to the fees set forth at the time the PACE Loan has been made. Please refer to the Program Website for a schedule of applicable fees.~~ As such, all projects are subject to the following fees:

- ~~8.~~ the fee payable at the PACE loan closing is referred to as the “Administration Fee”; and
- the semi-annual permanent servicing fee is referred to as the “Servicing Fee”.

Such fees may be capitalized into the PACE Loan, however doing so will not relieve each Lender of its obligation to pay the Servicing Fee on a current basis during the capitalization period.

Note that all Program fees are subject to change; participation in the Program will be subject to the fees set forth in the Program documents at the time of the closing of the PACE Loan. The current schedule of applicable fees is set forth below.

<u>Program Fee Schedule</u>			
<u>Servicing Fee</u>			
<u>Fee</u>	<u>Amount</u>	<u>Description</u>	
<u>Servicing Fee</u>	<u>0.10%</u>	<u>Fee payable as compensation to Administrator for loan servicing and Program administration. Calculated as annual interest rate added to outstanding principal balance of loan.</u>	
<u>Administration Fee</u>			
	<u>Column A -- Loan Amount</u>	<u>Column B -- Rate</u>	<u>Column C -- (Col A) * (Col B)</u>
1.	\$0 - \$10,000,000	1.25%	

2.	\$10,000,001 - \$30,000,000	0.50%	
3.	\$30,000,001 +	0.10%	
4.	Total Administration Fee (sum C1: C3)		

[PACE loans benefitting multifamily residential properties that are subject to one or more regulatory agreements with New York City or New York State agencies \(i.e., “Affordable Housing”\) are exempt from the Program fees described above.](#)

9. Changes in Program Terms; Severability

~~NYCEEC~~[The Administrator](#) and the City reserve the right to amend these Guidelines and the terms and provisions set forth herein at any time without notice; however, no such change will affect the obligation of a borrower to pay PACE Charges for approved financings. Participation in the ~~PACE~~ Program will be subject to the Program Guidelines in effect at the time of closing. [These Guidelines are subject to the additional terms, conditions and disclaimers provided in Appendix A attached hereto.](#)

If any provision of these Guidelines is determined to be unlawful, void, or for any reason unenforceable, removal or invalidity of that provision shall be deemed severable from these Program Guidelines and shall not affect the validity and enforceability of any remaining provisions.

It is the borrower’s [and the Lender’s](#) responsibility to confirm that the borrower [and the Lender \(respectively\)](#) has the most recent version of ~~PACE~~ Program related documents. ~~Borrowers and Lenders~~ should regularly check the ~~documents on the~~ Program Website [for the latest versions of such documents and for “FAQs”, Program updates and other similar information which may be posted from time to time.](#)

Appendix A

Additional Terms, Conditions, and Disclaimers

1. These Guidelines are being issued by the New York City Mayor's Office of ~~Sustainability~~ ("MOS Climate and Environmental Justice" ("MOCEJ")) and the New York City Energy Efficiency Corporation (acting in its capacity as the Administrator of the Program) on behalf of the City for purposes of providing a more detailed description of the requirements and processes applicable to the Program.
2. These Guidelines have been prepared pursuant to Section 119-gg of the New York General Municipal Law, Chapter 30 of Title 11 of the New York City Administrative Code and ~~Chapter 58 of Title 19 of the~~ Program Rules of the City of New York (collectively, the "Program Laws") and accordingly, these Guidelines and all provisions hereof are subject to the Program Laws in all respects. ~~In the case of any conflict between the provisions of these Guidelines and any provisions set forth in the Program Laws, the provisions of the Program Laws shall control. In the event of any conflict between the provisions of these Guidelines and any terms, conditions, or other provisions set forth in any given Master Lender Agreement, Collection Agreement, Master Transfer and Remittance Agreement, or any other Program agreement, certificate or other legal instrument (collectively, together with these Guidelines, the "Program Documents"), the provisions of such other Program Documents (excluding these Guidelines) shall control.~~
3. THIS DOCUMENT IS PROVIDED FOR REFERENCE PURPOSES ONLY AND CREATES NO LEGAL RIGHTS IN FAVOR OF ANY PROPERTY OWNER, LENDER, CAPITAL PROVIDER, CONTRACTOR OR ANY OTHER PERSON OR ENTITY, NOR DOES IT IMPOSE ANY LEGAL DUTY OR OBLIGATION ON THE ADMINISTRATOR OR THE CITY OF NEW YORK. THE ADMINISTRATOR AND THE CITY OF NEW YORK WILL ONLY INCUR LEGALLY BINDING OBLIGATIONS THROUGH THE DELIVERY OF DULY EXECUTED PROGRAM DOCUMENTS.
4. All users of these Guidelines should read the Program Laws, which contain important information regarding the structure and requirements of the Program, to which the Program ~~and~~ these Guidelines and the other Program Documents are each subject in all respects.
5. ~~Any~~ Except as may otherwise be indicated herein, any capitalized term used but not otherwise defined in these Guidelines shall have the meaning given such term in the Program Laws. Reference in these Guidelines to any law, rule, regulation, or document (including any document that is part of the NYSERDA Guidance), means such law, rule, regulation, or document as it may be amended, amended and restated, modified, supplemented, replaced or superseded from time to time.
6. All information and documents submitted to the Administrator in connection with the Program or otherwise is subject to the Freedom of Information Law, Article 6 of the New York Public Officers Law ("FOIL"). ~~Persons~~ submitting information or documents to the Administrator may provide in writing, at the time of submission, a detailed description of the specific information contained in its submission which it has determined is a trade secret and which, if disclosed, would substantially harm such person's competitive position. This characterization shall not be determinative but will be considered by the Administrator when evaluating the applicability of any exemption described in subdivision 2 of section 87 of the Public Officers Law in response to a FOIL request.
7. These Guidelines do not purport to contain all of the information that an interested party may need or desire in connection with the Program. ~~These~~ Guidelines have been prepared to

provide general guidance and assist interested parties in making their own evaluations. Interested parties should make their own investigations of the information set forth in these Guidelines and the documents referenced herein ([including the forms of the other Program Documents as available on the Program Website](#)) and make their own conclusions and consult with their own advisers to evaluate whether to participate in the Program, and to obtain any additional information that they may require.

8. THESE GUIDELINES ARE NOT INTENDED TO FURNISH LEGAL, REGULATORY, TAX OR ACCOUNTING ADVICE TO ANY PROPERTY OWNER, LENDER, CAPITAL PROVIDER, CONTRACTOR OR ANY OTHER PERSON OR ENTITY. THESE GUIDELINES, AND ALL PROGRAM AGREEMENTS RELATED TO PACE LOANS, SHOULD BE REVIEWED INDEPENDENTLY BY SUCH PARTIES, PERSONS OR ENTITIES, AND THEIR RESPECTIVE LEGAL, REGULATORY, TAX AND ACCOUNTING ADVISORS.

~~8.~~**9.** Neither the City nor the Administrator, nor any of their respective directors, officers, officials, employees, agents, representatives or advisors makes any representation (express or implied) or warranty as to the accuracy or completeness of these Guidelines or the information contained herein, and they shall have no liability hereunder. ~~—~~Only those particular representations and warranties which may be made by the City, the Administrator or any of their respective directors, officers, officials, employees, agents, representatives or advisors in one or more definitive written agreement(s), when and if any are entered into, and subject to such limitations and restrictions as may be specified in such agreement(s), shall have any legal effect.

~~9.~~**10.** Neither the City, nor the Administrator, nor any of their respective directors, officers, officials, employees, agents, representatives or advisors will be liable or responsible to any person or entity for any cost or expense incurred in connection with the Program except to the extent (if any) as set forth in one or more definitive written agreement(s), when and if any are entered into, and subject to such limitations and restrictions as may be specified in such agreement(s).

11. In consultation with MOCEJ, the Administrator reserves the right to take any of the following actions in connection with these Guidelines from time to time and without prior notice: amend, update, supplement, withdraw or cancel these Guidelines; waive any requirements of these Guidelines or make exceptions to any such requirements. In consultation with MOCEJ, the Administrator may exercise any such rights at any time in its sole and absolute discretion and without liability to any applicant or other parties for their costs, expenses or other obligations incurred in the preparation of an application package or otherwise in connection with these Guidelines.

* * *

~~Appendix B: PACE Lender Request for Qualifications ("RFQ")~~

~~Please visit the Program Website at
<https://www1.nyc.gov/site/nycaccelerator/resources/pace-page>.~~