



May 7, 2019

Ms. Kathy Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

**RE: Advance Notice of Proposed Rulemaking on Residential Property Assessed Clean Energy Financing;
Docket No. CFPB -2019-0011**

Dear Ms. Kraninger,

On behalf of the nation's cities, counties and mayors, we appreciate the opportunity to comment on the Consumer Financial Protection Bureau's (Bureau) Advance Notice of Proposed Rulemaking (ANPR) on Residential Property Assessed Clean Energy (PACE) Financing. This information request will help the Bureau better understand the unique nature of PACE assessments. We thank the Bureau for its ongoing outreach to local governments on this issue and encourage the agency to continue to engage with our members throughout the rulemaking process.

Under the Economic Growth, Regulatory Relief and Consumer Protection Act (EGRRCPA/Public Law 115-174), which was signed into law in May 2018, the Bureau is required to develop rules in consultation with state and local governments that ensure consumers have the ability to pay their residential PACE financing obligations. We look forward to working with the Bureau during this process to ensure PACE continues to benefit American homeowners and remains a viable financing tool for local governments.

The Benefits of PACE to Local Governments

Local elected officials are charged with protecting the health, safety and well-being of citizens and communities. As part of these responsibilities, local government may be required to meet or take voluntary action toward environmental and energy goals for renewable energy targets, emission reductions and building community resilience. PACE is an important public policy tool that helps local governments meet these objectives.

Local governments use PACE to help residential and commercial property owners finance energy efficiency upgrades or renewable energy installations. By utilizing PACE, local governments are able to remove many barriers to renewable energy and energy efficiency retrofits, such as high upfront costs

associated with buying and installing systems and the long-term ability to reap the benefits of cost savings. As a result, property owners use less water and energy, which reduces utility costs overall, and benefits local communities and economies.

Additionally, in Florida, property owners can use PACE to incorporate wind-resistance home upgrades such as new roofs, windows and other improvements that protect residential structures from hurricane force winds. This, in turn, strengthens local communities against extreme weather events, helps maintain local property values and reduces insurance premiums. PACE is one of the most important avenues state and local governments have to encourage these types of voluntary improvements.

According to [PACENation](#), an organization we work closely with, between 2009 and 2018 residential PACE financing has provided \$5.2 billion for over 220,000 homes; this has generated over 42,000 local jobs. Moreover, PACENation notes that these investments have reduced emissions and saved billions of gallons of water since the genesis of the program.

PACE Programs Utilize Traditional Tax Assessments to Meet Community Goals

PACE programs are built around traditional tax assessments, which local governments have successfully managed for centuries. Under PACE, local governments obtain startup funding through bonds or third-party entities. Once financing is secured, they can offer property tax assessments to residents and businesses for energy efficiency improvements. These low-interest and long-term assessments are attached to the property, not the homeowner, and are paid back on an annual or biannual basis through a special property tax assessment on the property.

PACE differs from traditional creditor-borrower relationships like unsecured consumer loans and residential mortgages in several crucial respects:

- **PACE has a public purpose:** PACE-financed projects are required by state and local law to fulfill vital public purposes, such as building resiliency (hurricane hardening, fire safety, seismic retrofits), energy and water efficiency and the generation of clean, renewable energy.
- **PACE uses traditional tax assessments:** PACE is a form of land-secured municipal financing with a 300+ year history. It is designed to work the same way that financing for parks, sewers, underground utility lines and other local public projects work--they are financed via assessments or special taxes collected along with real property taxes from the properties that benefit from the public service.
- **PACE programs are not loans:** PACE assessments are not consumer credit transactions and local governments that levy such assessments are not "creditors."

It is critical that state and local governments continue to have the freedom to enable and administer PACE programs, and that property owners have the ability to access PACE financing when considering the form of financing that best meets their needs.

PACE Assessments are Different than Traditional Consumer Loans and Must be Treated as Such

While primarily focused on the banking industry, EGRRCPA instructs the Bureau to determine whether Truth-in-Lending Act (TILA) requirements should be applied to residential PACE programs. TILA is a federal law that was passed in 1968 to protect citizens from unfair credit practices. Under section 307 the Bureau must set regulations for residential PACE financing that “carry out the purposes” of the TILA ability to repay (ATR) requirements for residential mortgages, apply the civil liability provisions of TILA to violations of these new regulations, and “account for the unique nature” of PACE.

EGRRCPA does *not* authorize the Bureau to apply other aspects of TILA to PACE. Moreover, since PACE assessments and liens are a form of property tax assessments, they are not associated with the personal debt of the real property owner. Instead, PACE obligations are attached to the property, regardless of current ownership. As a result, these assessments are not considered “consumer credit” and, as such, TILA cannot apply to such transactions.

Furthermore, PACE programs offer stronger consumer protections than other forms of available financing for home improvements. If a homeowner already holds a mortgage on the property, a TILA-compliant lender did a due diligence review of income, before approving the mortgage including a review of the ability to repay. A homeowner would then apply separately for PACE funding. Additionally, there is a process that local governments and their third parties use to review and assess whether the resident has the ability to take on additional debt. In fact, several studies have shown that PACE assessments actually have lower delinquency rates than other types of consumer loans. A 2018 [report](#) by DBRS, Inc. shows that residential PACE assessments in California had lower delinquency rates than other single-family home mortgages. Consequently, access to PACE financing results in better homeowner outcomes, especially in underserved communities.

Recommendation: Continued Engagement with Local Governments and a Transparent Rulemaking Process to Create a Practical Rule

We thank the Bureau for its early engagement with cities and counties on the ANPR. We see this as the first step of the process. As the Bureau moves forward, we encourage you to continue to engage in significant and meaningful consultation with local governments throughout the various stages of the rulemaking process. Working together, we can ensure that consumers are protected when utilizing PACE programs.

While we support efforts to protect consumers, we would like to urge the Bureau to proceed cautiously on changes that could make PACE programs nonviable. If the Bureau impedes the ability of homeowners

to access residential PACE programs due to over regulation, it will have a negative impact on the ability of local governments to address their community goals.

As the Bureau takes the next step of developing a proposed rule, we request that the Bureau identify several regulatory options they are considering and provide an opportunity for public comment on these options. A transparent rulemaking process will ensure that the best possible outcome for consumers and local governments is achieved.

In closing, mayors, cities and counties stand ready to collaborate with the Bureau on PACE. PACE is a valuable public financing mechanism that empowers local governments and their residents to strengthen infrastructure, while protecting citizens against natural disasters and extreme weather events. Moreover, PACE expands clean energy use, increases energy and water efficiency, and saves residents money on their utility bills. It is a win-win for all.

We support the comments submitted by cities, counties and related entities, such as PACENation. Additionally, we have attached information on the Kansas City residential PACE program (2017) as an example of how local governments establish and implement PACE programs with oversight and reporting responsibilities. PACE programs are not one-size-fits all, they take many different forms.

We look forward to working with you during this process to ensure PACE continues to benefit American homeowners and remains a viable financing tool for local governments. If you have any questions, please don't hesitate to contact us: Carolyn Berndt (NLC) at 202-626-3101 or Berndt@nlc.org; Julie Ufner (NACo) at 202-942-4269 or jufner@naco.org; Richard Anderson (USCM) at 202-861-6795 or randerson@usmayors.org.

Sincerely,



Clarence E. Anthony
CEO and Executive Director
National League of Cities



Matthew D. Chase
Executive Director
National Association of Counties



Tom Cochran
CEO and Executive Director
The U.S. Conference of Mayors

“HERO”: A RESIDENTIAL PACE PROGRAM IN KANSAS CITY

MAYOR SYLVESTER “SLY” JAMES

KANSAS CITY, MISSOURI

OVERVIEW

Since Kansas City affiliated with the Missouri Clean Energy District, Missouri’s statewide PACE (Property-Assessed Clean Energy) program, Kansas City homeowners now have access to the “HERO” program, which makes residential PACE loans to homeowners to improve the energy efficiency of their homes and install solar energy systems to generate clean energy. Since its launch the HERO program has seen significant uptake in Kansas City; in the first nine months of the program, there has been citywide participation in all six council districts.

IMPLEMENTATION

Mayor James and the City Council provided policy guidance in support of making energy efficiency and renewable energy projects more viable in the city and they authorized the city’s participation in PACE programs. On Oct 17, 2013 the City unanimously voted to join and participate in the statewide Missouri Clean Energy District (MCED) (the link to the ordinance is provided in the Additional Resources section). On Oct 29, 2015 Mayor James signed another ordinance authorizing the City to participate in another newly-created statewide Show Me PACE program.

To ensure the city’s stakeholders were represented in the MCED, the City nominated Shomari Benton as a representative to serve on the MCED Board of Directors and he has been serving for approximately 3 years. The Missouri Clean Energy District initially offered only commercial PACE loans, but in 2016, MCED entered into a partnership with Renovate America to offer residential PACE loans in Missouri. Renovate America is a residential PACE loan provider who had operated successfully in California for several years. By virtue of the city’s affiliation with MCED, residential PACE loans became available in Kansas City in September 2016 with the launch of Renovate America’s HERO program.

Mayor Pro Tem Scott Wagner has been featured in a video promoting MCED’s PACE program. City staff have made multiple presentations to various groups regarding the benefits of PACE loans for commercial and residential building owners.

As a result, commercial and residential building owners across Kansas City have taken advantage of PACE loans to finance installation of solar energy systems and to make significant energy efficiency improvements to their buildings.

The local investor-owned electrical utility, Kansas City Power & Light, provides extensive energy efficiency rebates that reduce the amount of



funding homeowners need to implement energy efficiency measures through the HERO program. The utility also works with solar installers to provide interconnection of residential solar energy systems to the local power grid.

Through the HERO program, local contractors (including women-owned and minority-owned businesses) install solar energy systems and make various energy efficiency improvements to participating homes.

In its first year of operation, the HERO program has funded and implemented hundreds of projects, across all six council districts in the city.

WHAT IS PACE?

Local governments use Property Assessed Clean Energy (PACE) programs to help property owners finance renewable energy and energy efficiency improvements on residential and commercial properties. Commercial properties may include multi-family residential, industrial and agricultural properties. The PACE concept began as a pilot project in Berkeley, California, in 2008. Since then, the vast majority of states with legislation authorizing PACE programs (31 states and D.C.) have authorized both residential and commercial PACE programs, but a few states authorized only one or the other.

PACE programs enable property owners to avoid high upfront costs related to installing clean energy technology, such as solar panels, or energy-saving retrofits. A local government will generally implement a state-authorized PACE program by designating an improvement district and issuing a bond secured by the real property within the district to raise capital. The PACE financing program enables access to low interest, long-term loans. Property owners may also see reduced energy bills. PACE programs allow property owners to pay for these improvements over time through assessments on their property tax bills. Once a property owner opts into a PACE financing program, the property remains subject to the PACE arrangement even if it is sold, transferred or foreclosed upon. The remainder of the assessment is a lien on the property.

The Federal Housing Finance Agency raised concerns in a July 2010 statement regarding the seniority of PACE liens over existing mortgages and called for a pause in residential PACE program implementation involving the establishment of first liens. In July 2016, the Federal Housing Administration (FHA) issued guidance that the FHA would approve, purchase, and refinance mortgage applications in states that do not give PACE obligations priority status over FHA mortgage liens and where the PACE assessment transfers from one property owner to the next, including through foreclosure sale. Today, residential PACE programs are one of multiple financing options available to homeowners, including home equity lines of credit. There are active residential PACE programs in California, Missouri, and Florida.

TIMELINE

- October 2013 – Mayor James signs the ordinance for the City to join the statewide Missouri Clean Energy District (MCED)
- 2013-2015 – Program research
- 2016 – Renovate America and Kansas City collaborate on program development
- September 2016 – Renovate America launches its HERO program (as part of MCED) to offer residential PACE loan
- June 2017 – The HERO program has approved 545 residential loans and completed 426 projects valued at \$4 million in Kansas City

COSTS AND FINANCING

As a local government affiliate of the Missouri Clean Energy District (one of two statewide commercial PACE programs), homeowners have access to the HERO program at no cost to the City. The average home improvement through the HERO program is around \$10,000 in Missouri.

RELEVANT POLICIES

In 2013 the City adopted an ordinance that authorized its affiliation with the Missouri Clean Energy District (MCED), a statewide clean energy development board offering PACE loans in accordance with newly-adopted state legislation. There are currently 31 states and D.C. that have passed legislation to enable PACE programs.

KEY COLLABORATORS AND STAKEHOLDERS

Renovate America (who has operated residential PACE programs in California for many years) launched their HERO program with MCED in order to offer residential PACE loans to Kansas City homeowners. They operate a turn-key program where homeowners work directly with the HERO program to assess opportunities for energy efficiency and renewable energy projects, determine what is financially viable, identify specific projects to be implemented, secure financing, and connect with registered contractors to perform the work. MCED and Renovate America employ consumer protection measures to ensure homeowners are satisfied with the work performed prior to payments being made to the contractors. Renovate America trains qualified contractors on PACE, registers them and tracks the quality of their work to ensure customer protections.

In discussions between city officials and Renovate America during the development of the HERO program in Kansas City, several items were discussed:

- The importance of using local contractors to do the work, as much as possible.
- Including qualified minority-owned businesses and women-owned businesses as HERO contractors to do the work in the city.
- Promoting the program across all neighborhoods in the city, and working with homeowners' and community associations.
- Incorporating sufficient energy consumer protection measures to protect the interests of local homeowners/borrowers.



OUTCOMES

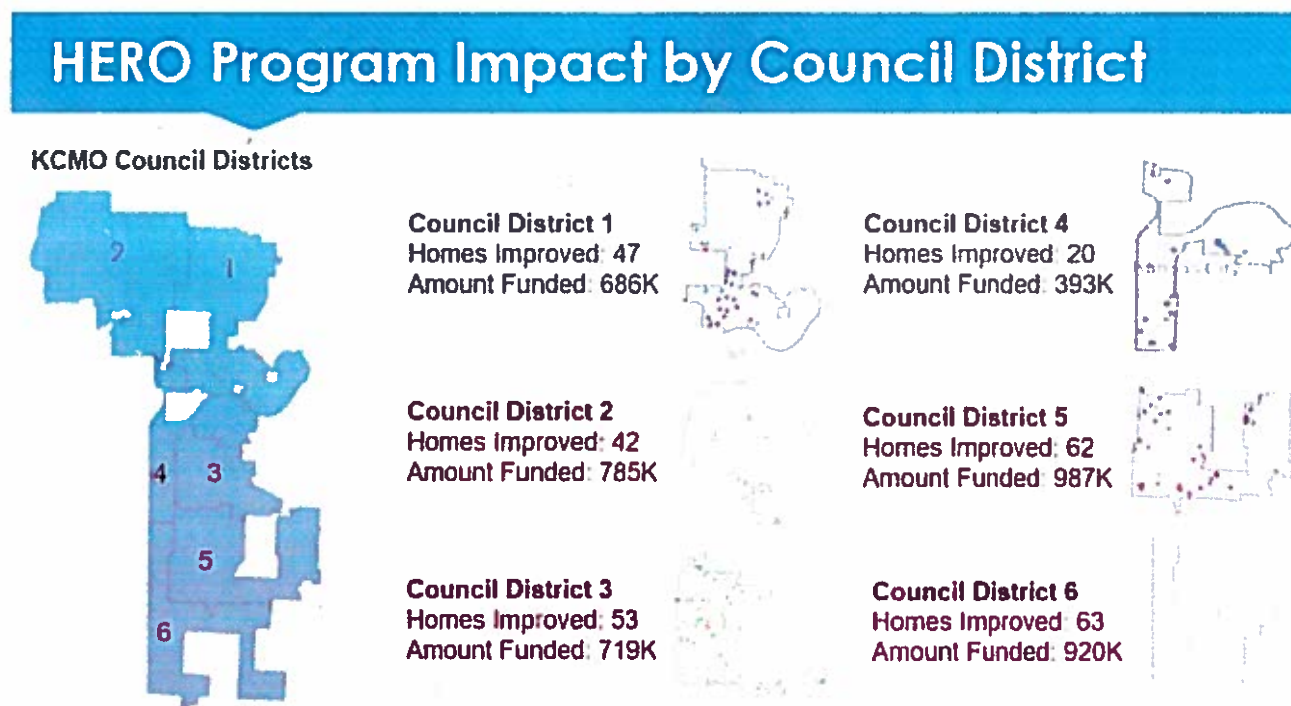
The HERO program has seen significant uptake. Results as of August 28, 2017 (9 months after its launch) are as follows:

- 1,080 residential assessment applications received
- 650 residential assessment applications approved
- 333 homes improved
- 538 improvement projects completed – 460 energy efficiency, 78 solar energy installations
- Total value of projects completed - \$5.2 million
- 21.5 million kWh projected energy savings over useful life of technologies
- 13,700 tons GHG reductions expected from these projects over useful life

LESSONS LEARNED

In the first nine months of the program, there has been citywide participation in all six council districts. Kansas City's participation in the HERO program has demonstrated that it is possible for cities to find good partners with shared interests, goals, and approaches to promote energy efficiency and renewable energy projects to benefit homeowners.

Figure 1, Demonstrated Results in Homes Improved and Financial Funding of the HERO Program in each Kansas City Council District as of July 24, 2017



ESSENTIAL COMPONENTS FOR REPLICATION IN OTHER CITIES

Residential PACE programs have been very limited to date (they are primarily in California and Boulder, Colorado) due to constraints imposed by Fannie Mae and Freddie Mac. Renovate America's first residential programs outside of California have been launched in 2016 in Missouri and Florida, so there are not a lot of similar programs the city could turn to. Kansas City officials spoke with representatives of several California cities including Santa Monica, San Francisco, Los Angeles, and Oakland, about their experience with residential PACE in general and Renovate America in particular.

Key steps for local governments:

- Create a foundation of shared objectives and expectations before program launch is critical.
- Perform due diligence regarding prior performance in other jurisdictions by the potential program's provider will increase the prospects for a good fit with your expectations and a greater likelihood of success.
- Prepare for skepticism by some folks and anticipate criticism (perhaps even unfounded negative rumors) about the program provider.

Key steps for private sector partners:

- Discuss program design in considerable detail with the local government partner to ensure there's a good match with what is offered and what consumers want.
- Include local business development and job creation opportunities in the program proposal.
- Ensure strong customer service as a key element in the proposed program.

ADDITIONAL RESOURCES

- The city ordinance that authorized the city's participation in the statewide MCED (Ordinance 130764) can be found online at: http://cityclerk.kcmo.org/LiveWeb/Documents/Document.aspx?q=fSXeiNhBfDemMjtttP6siK9RNLLDWsqmmQd7kB84G4fN3f7OJPYcWlC45b2bb5D9onz9Ft9LikdRipheBijZg_percent3d_percent3d
- Renovate America, a residential PACE provider, offers a variety of options for building improvements to different consumer bases, including commercial and residential.
- Provided at the following link are several descriptive videos, including an overview titled "Municipal Partnerships" that covers the fundamental steps for city implementation of a successful PACE program: <http://www.mced.mo.gov/video-gallery/#close>. This link also provides information for other invested players, such as contractors and homeowners.
- For more on PACE financing and the states where PACE enabling legislation has been enacted, visit CzES at: <https://www.czes.org/us-states-regions/policy-maps/property-assessed-clean-energy>
- FHA/HUD/VA PACE guidance from July 2016: https://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2016/HUDNo_16-110
- PACENation: <http://pacenation.us/>

Kansas City reports the following updates as of Nov. 2018:

- 1,858 residential assessment applications received
- 1,052 residential assessment applications approved
- 945 improvement projects completed - 812 energy efficiency, 133 solar energy installations
- Total value of projects completed - \$8.9 million
- 41 million kWh projected energy savings over the useful life of the technologies
- 26,000 tons of GHG reductions expected from these projects over their useful life