2019 POLICY BRIEF

SUPPORT COUNTY PRIORITIES IN RESIDENTIAL PROPERTY ASSESSED CLEAN ENERGY (PACE) FINANCING RULEMAKING EFFORTS

QUICK FACTS

- PACE is a financing mechanism issued by state and local governments to incentivize renewable energy and energy efficiency improvements to homes and businesses
- PACE-financed projects 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 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 assessments are not consumer credit transactions and local governments that levy such assessments are not "creditors."

ACTION NEEDED:

Counties are encouraged to continue to engage with the Consumer Finance Protection Bureau on its ongoing efforts to write consumer protection rules for Residential Property Assessed Clean Energy programs.

BACKGROUND:

On March 8, 2019, the Consumer Financial Protection Bureau (CFPB) initiated a process to develop new rules to the Residential Property Assessed Clean Energy (R-PACE) financing program by publishing an Advanced Notice of Proposed Rulemaking (ANPRM). The ANPRM was published to solicit information relating to the agency's implementation of the Economic Growth, Regulatory Relief and Consumer Protection Act (EGRRCPA) – signed into law in 2018 – and will inform the CFPB throughout its rulemaking process. The ANPRM comment period closed on May 7.

PACE is a financing mechanism issued by state and local governments to incentivize renewable energy and energy efficiency improvements – such as energy efficient boilers, upgraded insulation, new windows and solar panel installations – to homes and businesses. Structured as a traditional tax assessment, local governments participating in PACE startup funding through bonds or third-party entities. Once financing is secured, counties make PACE financing available to residents and businesses for energy efficient improvements. These low-interest and long-term assessments are attached to the property, not the homeowner or business, and are paid back on an annual or biannual basis through a special property tax assessment on the property.

Primarily focused on the banking industry, EGRRCPA instructs the CFPB to determine whether Truth-in-Lending Act (TILA) requirements should be applied to R-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 R-PACE.

EGRRCPA does not authorize the Bureau to apply other aspects of TILA to R-PACE. Since R-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, R-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 does not apply to such transactions.

Currently, 36 states have PACE enabling laws and 20 states have active PACE programs. Three states – California, Florida and Missouri – have active residential PACE programs. These states, along with other states considering residential PACE, will be impacted by this rulemaking effort.

In May 2019, NACo submitted comments on the CFPB's ANPRM on R-PACE financing programs. In the letter, counties stressed the importance of PACE for both local communities, residents and businesses to meet energy goals while reducing costs. Additionally, the comments emphasized the unique nature of PACE financing as traditional tax assessments, which differentiates PACE from other types of loans.

For further information, contact: Julie Ufner at 202.942.4264 or jufner@naco.org.

COMMITTEES OF JURISDICTION

U.S. House Financial Services Committee

MAJORITY:

Maxine Waters (D-Calif.) – Chairwoman

Carolyn B. Maloney (D-N.Y.)
Nydia M. Velázquez (D-N.Y.)
Brad Sherman (D-Calif.)
Gregory W. Meeks (D-N.Y.)
William Lacy Clay (D-Mo.)
David Scott (D-Ga.)
Al Green (D-Texas)
Emanuel Cleaver II (D-Mo.)
Ed Perlmutter (D-Colo.)
Jim Himes (D-Conn.)
Bill Foster (D-Ill.)
Joyce Beatty (D-Ohio)
Denny Heck (D-Wash.)
Juan C. Vargas (D-Calif.)
Josh Gottheimer (D-N.J.)
Vicente Gonzalez (D-Texas)
Al Lawson (D-Fla.)
Michael F.Q. San Nicolas (D-Guam)
Rashida Tlaib (D-Mich.)
Katie Porter (D-Calif.)
Cindy Axne (D-Iowa)
Sean Casten (D-Ill.)
Ayanna S. Pressley (D-Mass.)
Ben McAdams (D-Utah)
Alexandria Ocasio-Cortez (D-N.Y.)
Jennifer Wexton (D-Va.)
Stephen F. Lynch (D-Mass.)
Tulsi Gabbard (D-Hawaii)
Alma Adams (D-N.C.)
Madeleine Dean (D-Pa.)
Jesús "Chuy" García (D-Ill.)
Sylvia R. Garcia (D-Texas)
Dean Phillips (D-Minn.)

MINORITY:

Patrick T. McHenry (R-N.C.) – Ranking Member

Peter T. King (R-N.Y.)
Frank D. Lucas (R-Okla.)
Bill Posey (R-Fla.)
Blaine Luetkemeyer (R-Mo.)
Bill Huizenga (R-Mich.)
Sean P. Duffy (R-Wis.)
Steve Stivers (R-Ohio)
Ann Wagner (R-Mo.)
Andy Barr (R-Ky.)
Scott Tipton (R-Colo.)
Roger Williams (R-Texas)
French Hill (R-Ark.)
Tom Emmer (R-Minn.)
Lee Zeldin (R-)
Barry Loudermilk (R-Ga.)
Alex X. Mooney (R-W.Va.)
Warren Davidson (R-Ohio)
Ted Budd (R-N.C.)
David Kustoff (R-Tenn.)
Trey Hollingsworth (R-Ind.)
Anthony Gonzalez (R-Ohio)
John W. Rose (R-Tenn.)
Bryan Steil (R-Wis.)
Lance Gooden (R-Texas)
Denver Riggleman (R-Va.)

U.S. Senate Banking, Housing and Urban Affairs Committee

MAJORITY:

Michael Crapo (R-Idaho) – Chairman

Richard C. Shelby (R-Ala.)
Sen. Patrick J. Toomey (R-Pa.)
Tim Scott (R-S.C.)
Ben Sasse (R-Neb.)
Tom Cotton (R-Ark.)
Mike Rounds (R-S.D.)
David Perdue (R-Ga.)
Thom Tillis (R-N.C.)
John Kennedy (R-La.)
Martha McSally (R-Ariz.)
Jerry Moran (R-Kan.)
Kevin Cramer (R-N.D.)

MINORITY:

Sherrod Brown (D-Ohio.) – Ranking Member

Jack Reed (D-R.I.)
Robert Menendez (D-N.J.)
Jon Tester (D-Mont.)
Mark Warner (D-Va.)
Elizabeth Warren (D-Mass.)
Brian Schatz (D-Hawaii)
Chris Van Hollen (D-Md.)
Catherine Cortez Masto (D-Nev.)
Doug Jones (D-Ala.)
Tina Smith (D-Minn.)
Kyrsten Sinema (D-Ariz.)