

NYC Accelerator PACE Financing

Program Guidelines

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

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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 improve their existing properties to reduce utility costs, energy consumption, and greenhouse gas emissions. Unlike conventional financing, loans provided through the PACE Financing Program (the “Program”) are repaid in installments through a charge on the subject property’s tax bill.

The Program is a platform allowing qualified lenders to provide commercial PACE financing for eligible projects. (See “Eligible Improvements” defined herein). Building owners seeking PACE financing should visit the Program website at nyc.gov/pace (“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 (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 (“Guidelines”) have been developed by the Administrator and MOCEJ pursuant to Chapter 58 of Title 19 of the Rules of the City of New York (the “Program Rules”) and replace all prior versions of the Program Guidelines, including those dated April 22, 2021, March 4, 2022, and March 31, 2022. These Guidelines provide information on the Program generally and describe the loan requirements, project approval requirements and application requirements for PACE financing in New York City. 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 “Program Documents” are comprised of these Guidelines, the Master Lender Agreement, the Collection Agreement and other Program agreements, certificates and other legal instruments. The most recent version of this document, other form Program Documents, and a link to the Program App can be found on the Program Website.

Many of the eligibility criteria for PACE financing adopted for the Program conform to the criteria 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”), which includes NYSERDA’s *Municipal Sustainable Energy Loan Program - Commercial Property Assessed Clean Energy (PACE) Guidance Document*, dated September 22, 2020 (the “NYSERDA General Guidance”).

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 the Program Rules.

Although the Program Rules authorize PACE loans for new construction and borrowers who have a leasehold interest, these Guidelines do not provide implementation guidance for those topics. The Administrator and MOCEJ anticipate including additional provisions which will

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).

provide for PACE loans for new construction and leasehold interest topics in a future version of the Program Guidelines.

2. Qualified PACE Lenders

PACE loans may only be originated by qualified PACE lenders (“Lenders”). Any entity seeking to become a Lender should review the Lender Request for Qualifications (“RFQ”), which is available on the Program Website. As more fully described in the RFQ, to become a Lender, a party must (1) meet the “Qualification Requirements” described in the RFQ; and (2) enter into a Master Lender Agreement with the Administrator (“Master Lender Agreement” or “MLA”).

3. PACE Loan Requirements

Table 1 below provides a summary of the main Program requirements, which are described in more detail later in these Guidelines. An applicant must demonstrate compliance with such Program requirements and the eligibility criteria set forth in Section 58-03 of the Program Rules.

Table 1: Summary of Program Loan Requirements

1. The applicant for a PACE loan must be an Eligible Borrower.
2. The subject property must be an Eligible Site.
3. The PACE loan must fund Eligible Improvements.
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. All Projects must have a SIR of 1.0 or greater.
6. The PACE loan term must be less than or equal to the weighted average useful life of the improvements, measures or systems financed.
7. The PACE loan must be consistent with the other Required Loan Features described below.
8. Consent must be obtained from all holders of mortgages or deeds of trust on the subject property.

Borrower Eligibility

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 the owner of record of an Eligible Site (defined 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

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,

Site Eligibility

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

- The property must be located in one of the five boroughs of New York City.
- A building must already exist on the property and it must not be a one- or two-unit residential building.
- The proposed project must not involve “New Construction” or a “Major Renovation” (as those terms are defined in the form MLA).

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
- 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 most recent version of 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.

Eligible Improvements

Each PACE loan must 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” means any improvement to real property, involving the renovation or retrofitting of an existing building, 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” 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 system, fuel cell technology, or other renewable energy technology approved by NYSERDA, not including the combustion or pyrolysis of solid waste. Please refer to

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.

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

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 Energy Audit that meets all applicable NYSERDA requirements, including those specified in the NYSERDA Guidance. This includes a requirement that the Energy Audit be 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 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 more than 2 years prior to the date on which the PACE financing agreement between the Eligible Borrower and Lender is signed, or the date project construction 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)

All projects financed under the Program 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. For additional details, please refer to Section V of the NYSERDA General Guidance and the NYSERDA Guidance document entitled *Guidance for Calculating a Cost Benefit Ratio (CBR)*, Version 4, dated June 8, 2018.

Required Loan 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

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.

(each, a “PACE Charge Payment Schedule”), Lenders should be mindful of the following requirements.

- 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 Technical Certification (see below).
- 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).
- 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 achieved construction completion after the later of: May 19, 2019, or 3 years prior to the date on which the PACE financing agreement between the Eligible Borrower and 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 construction completion and the date on which the PACE financing agreement between the Eligible Borrower and Lender is signed.

Complete PACE Application

In general, Lenders must provide all required application materials on behalf of each PACE loan applicant using the 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.

⁵ See Section 4 of Local Law 97 of 2019.

4. 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 “Lender Certification”) using the most recent form available on the Program Website.

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. In general, the Technical Certification should be certified by the same contractor that provided the Energy Audit or Feasibility Study. The contractor must use the most recent 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 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.
 - Input the projected energy cost savings by fuel type for each improvement, measure and system.
- Financing Fields
 - Provide the estimated energy cost savings for the project.
 - 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).
 - Provide documentation/calculation supporting the additional savings.
 - The financing costs must be equal to those shown in the loan documents.
 - Confirm that the project is “cost effective” and calculate the SIR to be 1.0 or greater.
- Local Law No. 97 Fields

- Input the gross floor areas to determine the greenhouse gas emissions savings 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 most recent form of TIPLA available on the Program Website.

5. PACE Application Process

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

<u>Table 2: Program Loan Closing Process</u>		
↓	Phase 1:	Intake
●	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 Program App.

Process

Only Lenders can access the 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 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.
- 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, certifying that the borrower is an Eligible Borrower and that the property is an Eligible Site, 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 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 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.

Defined Status: Proposed Project

A Proposed Project is a project for which a record has been created in the Program App. and which has received preliminary approval. Once the status of a project has become a “Proposed Project,” the Lender will 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 Program App.

Process

For a Proposed Project in the data gathering phase, a Lender must provide all information and documentation required by these Guidelines 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 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 the Administrator and the City, and written notice of the PACE loan is publicly recorded. Required documents may be downloaded from the Program Website.⁶

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, 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.

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 City Register or in the Richmond County Clerk's Office, documenting that the subject property is participating in the 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 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. 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").

⁶ As of March 1, 2022 the City's authority to sell or transfer tax liens through a securitization program expired. Accordingly, the agreement known as the Master Transfer and Remittance Agreement is no longer a feature of the Program.

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

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

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

Billing and Collection

Pursuant to subdivision (b) of section 11-3005 of the New York City Administrative Code, a charge on a property that benefits from a PACE loan made under the Program (each, a "PACE Charge"), shall be levied and collected at the same time and in the same manner as City Charges (as defined in Section 58-02 of the Program Rules). As more fully set forth in the Collection Agreement, each PACE Charge will be billed as a separate line item on the property tax bill (referred to as the "statement of account") for the real property benefited by the PACE loan.

Each PACE Charge will be billed according to the PACE Charge Payment Schedule established by the applicable PACE loan. After a PACE loan closes, the Administrator will provide to the New York City Department of Finance ("DOF") the applicable PACE Charge Payment Schedule and DOF will bill the appropriate PACE Charge on the subject property's statement of account at such times as provided for in such schedule. The date on which the initial PACE Charge appears on a statement of account will vary according to the applicable PACE Charge Payment Schedule. For example, the initial PACE Charge may not appear on a statement of account until construction of the project is complete or some other date after the PACE loan closing, as prescribed by the PACE Charge Payment Schedule.

For periods during which a given PACE Charge Payment Schedule states that principal and/or interest payments are to be made by the borrower, any such PACE Charge will be due semi-annually, on January 1 and July 1 of each year. The borrower must pay any such PACE Charge to DOF in the same manner as City Charges.

If and when a borrower pays a PACE Charge, such payment 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 a PACE Charge payment received into the Collection Account to be disbursed to the Lender in accordance with the applicable Collection Agreement. Administrator may retain a qualified third-party to assist Administrator in its duties as Paying Agent.

A payment made by a borrower on their property tax bill which includes a PACE Charge shall be applied in order of priority (i) first, to the payment of City Charges; (ii) second, to the payment of overdue water and sewer charges; and (iii) third, to the payment of a PACE Charge.

Delinquent Loan Payments

If a borrower fails to make full and timely payment of a given PACE Charge, such PACE Charge will automatically become a “PACE Charge Lien”. Pursuant to subdivision (c) of section 11-3005 of the New York City Administrative Code, a PACE Charge Lien is subject to the provisions of chapters 3 and 4 of title 11 of the New York City Administrative Code. Under such chapter 3, a PACE Charge Lien accrues interest at the same statutory interest rate as a lien arising from the nonpayment of real property taxes.

Each PACE Charge Lien will be included in the late payment notices sent by DOF to the related property owner. Until recently, the City has had the authority to sell or transfer tax liens to a tax lien trust. Presently, however, the City does not have such authority.

A Lender, however, may enforce a PACE Charge Lien by any remedy available to it by contract, at law or in equity; provided, that such remedies are consistent with applicable law and all other Program requirements. To the extent the City receives authorization to sell or transfer tax liens as a means of enforcing the non-payment of City Charges, PACE Charge Liens may be included in such enforcement.

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 (or equivalent) with the Office of the City Register, or, in the case of real property in Staten Island, with the Office of the Richmond County Clerk. 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 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 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 the Administrator for five years following project completion.
- 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 most recent form of Assignment and Assumption Agreement available on the Program Website.

7. Program Fees

The Program is designed to be a self-sustaining program administered on behalf of the City. As such, all projects are subject to the following fees:

- 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. Please refer to the Program Website for the current fee schedule.

9. Changes in Program Terms; Severability

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 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 Program related documents. Borrowers and Lenders should regularly check 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 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 the Chapter 58 of Title 19 of the 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 other Program Document, the provisions of such other Program Document (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, these Guidelines and the other Program Documents are each subject in all respects.
5. 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.
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.
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. Subject to applicable law and approval by the City, 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 set forth in these Guidelines that are not required by the Program Laws, or make exceptions to these Guidelines to the extent any given provision herein is not required by the Program Laws. Subject to applicable law and approval by the City, the Administrator may exercise the right described in the prior sentence 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.
12. Notwithstanding anything to the contrary set forth herein, in no event will the Administrator have the right to make or otherwise promulgate any amendment, update, or supplement to these Guidelines that conflicts with any Program Laws, and shall have no right to waive any requirements set forth herein that would conflict with any requirement set forth in any Program Laws.

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