



*“Bay Area communities working together for a sustainable energy future.”*

---

## Memorandum

**To:** ABAG Member Jurisdictions  
**From:** Jennifer K. Berg, BayREN Senior Program Manager  
Richard Chien, BayREN PACE Lead, City and County of San Francisco Department of the Environment  
**Re:** Comparison of ABAG Regional Collaborative Services Agreement and the Residential PACE Consumer Protection Policies adopted by CSCDA, WRCOG, SANBAG and PACENation  
**Date:** May 18, 2016

### I. Introduction

This memo provides a comparison of the Association of Bay Area Governments (ABAG) Regional Collaborative Service Agreement (RCSA) for residential PACE programs (Property Assessed Clean Energy) with the Residential PACE Consumer Protection Policies (CPP) adopted by the California Statewide Communities Development Authority (CSCDA) Western Riverside Council of Governments (WRCOG), San Bernardino County Associated Governments (SANBAG) and PACENation, a national umbrella organization.

### II. BayREN and PACE

The Association of Bay Area Governments (ABAG) serves as the Program Administrator for the Bay Area Regional Energy Network (BayREN), a consortium of the nine counties that work together to develop and implement energy efficiency programs. PACE programs allow qualified property owners to obtain affordable, long-term financing for energy efficiency, renewable energy, and water conservation improvements, and repay it through their secured property tax bills.

In the past few years, residential PACE has made resurgence in California, mainly due to demonstrated success in Southern California, and by the establishment of the State’s [PACE Loss Reserve](#) program. In order to help BayREN member jurisdictions prepare joining third-party administered residential PACE programs, in 2015, ABAG issued an RFI to active PACE

administrators to help identify and institutionalize key best practices through the use of the RCSA.

### **III. Regional Collaborative Services Agreement (RCSA)**

Typically local jurisdictions make residential PACE available to their property owners by passing an authorizing resolution to "opt in" to a Joint Powers Authority (JPA) that has partnered with PACE providers. The JPA issues bonds and partners on legal and related matters with PACE Providers, private companies who have arranged capital to purchase the bonds, administer programs, vet and work with installation contractors, and service assessments in partnership with county tax collectors. This makes the proposition to local governments attractive since there is almost zero cost or effort required to participate.

However, since the PACE Provider's contractual relationship is with the JPA, much of the control and oversight of PACE activities falls on the JPAs. The local government, with the ability to opt-in or opt-out of a program, may influence how the PACE provider(s) that have been approved in the jurisdiction conduct their business activities. In this spirit, the RCSA was developed to allow jurisdictions to become more involved in the PACE programs. The intent of the RCSA is to collaborate with PACE Providers on behalf of ABAG member jurisdictions to:

- Monitor PACE activities in regards to a common set of consumer protections practices
- Implement data sharing for improved program reporting and transparency
- Support complementary energy efficiency efforts in local communities.

ABAG has executed the RCSA with the following PACE Providers and/or Joint Powers Authorities: Western Riverside Council of Governments (California HERO Program); PACE Funding Group LLC; Ygrene Energy Fund California LLC; CounterPointe Energy Solutions LLC (AllianceNRG Program); and Figtree Company, Inc.

### **IV. CSCDA AND WRCOG**

CSCDA was created in 1988, under California's Joint Exercise of Powers Act, to provide California's local governments with an effective tool for the timely financing of community-based public benefit projects. Three PACE Administrators have been appointed to manage the CSCDA Open PACE program which offers members turn-key PACE solutions that provide residential and commercial property owners the choice among prequalified PACE financing providers. The prequalified program administrators operating the following programs are AllianceNRG Program, PACE Funding LLC and Renew Financial LLC (administering CaliforniaFIRST). Any cities or counties that are a member of CSCDA can adopt a resolution to

opt-in to CSCDA Open PACE. Of these providers, only Renew Financial has not signed the RCSA.

## **V. Residential PACE Consumer Protection Policies**

Together with other PACE providers, CSCDA and WRCOG developed the CPP v1.0 as baseline standards that Renew Financial and Renovate America urge all sponsors of PACE programs operating in California to adopt. The standards “are not just good for property owners, they provide a strong positive foundation for energy and water efficiency and renewable energy in [the] community – and their consideration is central to [the jurisdiction’s] oversight role.” (WRCOG letter to Mayor Tom Bates, attached.)

## **VI. Comparison of RCSA and CPP**

ABAG is very supportive of any efforts to help protect consumers and applaud the PACE Providers for developing the CPP, but there are differences between the two documents as detailed below.

### **A. Overall Comparison**

#### **1. Policy v. Agreement**

**CPP:** These are “baseline consumer protection policies” that guide the program’s implementation. It can be inferred that PACE Providers under their programs are required to follow the policies. (While there may be contractual obligations between CSCDA and its approved PACE Providers, there is no mention of this in the CPP; hence, the inference.)

**RCSA:** This is a legal agreement executed between ABAG and participating PACE providers (CSCDA and non-CSCDA). The agreement applies to PACE activities in the entire ABAG territory. Participating Entities (ABAG cities and counties) may choose to sign an Acknowledgement of the Agreement. PACE Providers that are signatories to the RCSA are required to abide by all terms.

#### **2. Enforcement/Termination**

**CPP:** There is no information about enforcement, penalties for violating the terms, etc. In a letter from one of the PACE providers, it is stated that the local governments are responsible for oversight. (Letter from WRCOG to Mayor Bates.) In the CPP, under the policy for Marketing & Communications, at 8.2, the implementing PACE entity, or “Partner” (i.e. the private party that contracts with the JPA to administer its PACE program), is responsible for development and enforcement of the marketing guidelines. Additionally, Policy 5, Post Funding Homeowner Support states that it is the policy that the Program and Partners monitor and test the protections,

implement procedures, etc. While not explicit, it is assumed that the JPA/issuer is responsible for overall compliance.

**RCSA:** ABAG has the authority to terminate the agreement with any PACE provider with or without cause. A formal process for termination has been developed. (A copy of the policy is attached.) Upon termination, ABAG will notify affected Participating Entities of the action. The agreement identifies the choice of forum and other grievance procedures.

## **B. Consumer Protections**

There are consumer protections in both the CPP and the RCSA. The CPP v1.0 includes some policies that are not included in the RCSA, such as additional protections for homeowners over 64. However, there are several differences of note:

- The RCSA “requires an applicant’s acknowledgment of the Federal Housing Finance Agency position by a *separate signature/initial acknowledgment*, in a Residential Disclosure Signature Form that is substantially similar in content to Attachment 1(a) or 1(b), as approved by ABAG.” Section 2.3.3 (emphasis to show the difference with the CPP, which requires written acknowledgement by homeowner of the FHFA policy toward PACE.) Requiring the content provided in Attachment 1(a) or 1(b) of the RCSA to be provided ensures that this important information is highlighted for the property owner.
- The RCSA has standard of care requirements.

## **C. Data Disclosure**

The biggest area of difference between the documents relates to the disclosure of data.

**CPP:** Sections 13.1 and 13.2 provide that it is the policy of the program to report information on a quarterly basis. The reporting categories include:

- Number of projects funded
- Amount funded
- Estimated amounts of energy savings
- Estimated amount of renewable energy produced
- Estimate amount of water savings
- Estimated amount of GHG reductions, and
- Estimated number of jobs created.

All information will only be provided in the *aggregate*.

**RCSA:** In contrast, project level data (as well as some categories in the aggregate) must be provided to the Participating Entities. (Section 2.5.3) Specifically, either real time access to data or quarterly reports at the request of the local government shall be provided *on the project level* that includes:

- Assessor’s Parcel Number of the property
- Dollar amount financed
- Listing of all energy and water efficiency measures financed
- Listing of all renewable generation improvements
- Estimated energy and water savings associated with the project.

This information was added to the agreement as it helps local governments with their climate action planning, better understand the needs and opportunities with their building stock, and informed by data, be able to consider additional complementary policies and strategies to advance local energy goals [see (D) below]. Indeed, this is consistent with Recital 6 of the Agreement: “WHEREAS, the PACE Provider is willing to participate to support community climate goals...”

Other information that is to be provided to the Participating Entity in the aggregate (if available):

- Amount of rebate or incentive dollars associated with the project (not financed) and the name of the efficiency program
- How the customer heard about the PACE program and the basis of their financing selection, and
- Why they chose the particular provider.

The RCSA also requires the Providers to give the Participating Entity the name and contact information for contractors that conduct business or have an office within the Participating Entity’s jurisdiction. Section 2.5.1.

These additional requirements in the RCSA illustrate how the RCSA provides multiple benefits to the Participating Entities beyond a financing option for their constituents.

#### **D. Energy Efficiency Programs and Other Efforts to Help Meet Climate Goals**

The RCSA requires the dissemination of information about energy efficiency programs and related information. There is nothing comparable in the CPP. Specifically, the RCSA requires the PACE provider to:

- Provide training to contractors and information to property owners on the availability of rebates (for all utility and generation types) including and not limited to city and county rebate programs, BayREN programs, PG&E programs and other such offerings. (Section 2.3.4)
- Provide assistance to ABAG and any Participating Entity for (1) coordinating and implementing the integration of the PACE Provider into applicable BayREN and other relevant energy efficiency programs; and (2) support of contractor training. (Section 2.7.3)
- Collaborate on any local and/or regional efforts that may impact PACE financing participation to achieve the best possible outcome for property owners. (Section 2.7.1)

The ability to lower total financing amounts with available rebate funding (paid for by California ratepayers) is a nontrivial consideration, but needs to be balanced against the highly efficient processes developed by PACE Providers which has allowed them to be successful; however, not mentioning these existing resources at all would be a major missed opportunity.

## **VII. Conclusion**

The CPP provides good policies designed to protect our citizens. However, as detailed above, are several additional requirements provided in the RCSA that are beneficial to the industry, the municipalities and constituents. The RCSA, in addition to consumer protections, provides multiple benefits to Participating Entities, including project level data, required information to homeowners about local programs, and has a third-party entity that can investigate any alleged violations and terminate the provider for multiple infractions, if necessary.



## Western Riverside Council of Governments

County of Riverside • City of Banning • City of Calimesa • City of Canyon Lake • City of Corona • City of Eastvale • City of Hemet • City of Jurupa Valley  
City of Lake Elsinore • City of Menifee • City of Moreno Valley • City of Murrieta • City of Norco • City of Perris • City of Riverside • City of San Jacinto  
City of Temecula • City of Wildomar • Eastern Municipal Water District • Western Municipal Water District • Morongo Band of Mission Indians  
Riverside County Superintendent of Schools

March 23, 2016

Tom Bates  
Mayor  
City of Berkeley  
2180 Milvia St  
Berkeley, CA 94704

**Subject: Residential PACE Program Consumer Protection Policies**

Dear Mayor Bates:

As the original bond issuing authority for the State's leading Property Assessed Clean Energy (PACE) Program, the Western Riverside Council of Governments (WRCOG) is reaching out to you to highlight an opportunity to raise the bar for consumer protection for property owners in your community. We are working closely with the California Statewide Communities Development Authority (the bond issuer for the CaliforniaFIRST PACE Program) on this initiative, leveraging the power of a multi-provider PACE platform.

The HERO Program was created to address a number of important public policy objectives; creating jobs, achieving energy and water savings, improving properties, and providing a market mechanism to reduce greenhouse gas emissions, to name a few. Along with progress made in addressing these objectives, we see consumer protection as another critical way PACE adds value to the City of Berkeley. From assurances that contractors are licensed, bonded, insured, and in good standing with our Program, to the promise that no one gets paid until the property owner signs off that the job is done, we believe the HERO Program does more than any other consumer financing mechanism to protect property owners making improvements. These protections include prudent underwriting standards, requirements that the products installed meet federal and state standards for energy efficiency, renewable energy or water conservation, and post-funding supports including dispute resolution and resources for selling and refinancing a PACE-improved property.

We strongly encourage you to consider making these standards (attached) a baseline for every PACE provider operating or seeking to operate in your community. We believe these standards are not just good for property owners, they provide a strong positive foundation for energy and water efficiency and renewable energy in your community – and their consideration is central to your oversight role.

PACE is a still relatively new form of financing, offered in partnership with local and regional government (without cost to taxpayers), and as such must clear a high bar of upholding the public trust. As new PACE providers enter the marketplace and look to operate within your jurisdiction, it is critically important that each can commit to AND demonstrate – through independent audit – a track record of success in implementing the consumer protections contained in the attached document. If they cannot, the public trust can be easily eroded.

The baseline consumer protection policies adopted by WRCOG address the following areas: (i) Risk, (ii) Disclosures and Documentation, (iii) Financing Terms, (iv) Operations, (v) Post-Funding Support, (vi) Data Security, (vii) Privacy, (viii) Marketing and Communications, (ix) Protected Classes, (x) Contractors, (xi) Eligible Products, (xii) Pricing, (xiii) Reporting, and (xiv) Closing & Funding. In addition, we are

Mayor Bates  
Page 2  
March 23, 2016

currently working with Renovate America, which administers the HERO Program, to develop a set of examination procedures that will serve as the basis for a regular, independent audit beginning this year.

We believe these consumer protection policies are comprehensive and, if adhered to by all PACE providers, are likely to raise the bar for consumer protection in the home and commercial building improvement industry.

Finally, we consider these standards to be a living document, to be revised from time to time to respond to consumer experience in the marketplace and reflect positive changes that continue to meet our objectives to provide outstanding consumer protections. We appreciate your consideration of this important governance issue.

Should you have any questions, please feel free to contact WRCOG's Director of Energy and Environmental Programs, Barbara Spoonhour, at (951) 955-8313 or [spoonhour@wrcog.cog.ca.us](mailto:spoonhour@wrcog.cog.ca.us), or myself at (951) 955-8303 or [bishop@wrcog.cog.ca.us](mailto:bishop@wrcog.cog.ca.us).

Sincerely,

A handwritten signature in black ink that reads "Rick Bishop". The signature is written in a cursive, flowing style.

Rick Bishop  
Executive Director

cc: Dee Williams-Ridley, City Manager

Attachment: Summary of Consumer Protection Policies Every PACE Provider Should Meet

## **SUMMARY OF CONSUMER PROTECTION POLICIES** **EVERY PACE PROVIDER SHOULD MEET**

1. **RISK:** These criteria examine the real property on which the improvements will be installed, the encumbrances presently recorded against the property to ensure it is harnessing unused financing capacity instead of placing an inappropriate burden on the homeowner, the nature of the improvements to be installed to ensure efficiency; and the homeowner's mortgage and property tax payment history.

2. **DISCLOSURES & DOCUMENTATION:** PACE is a new form of financing that, while sharing some features of traditional financing, presents new considerations for homeowners. Disclosures covering PACE's unique repayment cycle (as a property tax) and Federal Housing Finance Authority guidance regarding payoff of financing at the time of sale or refinance in conjunction with a federally-insured mortgage are among the considerations. PACE financing terms shall be confirmed by the Partner by telephone with homeowners working with all but their top-rated contractors, and for all homeowners over age 64. Those terms shall include a fixed interest rate, financing term not to exceed the useful life of the product, a three day right to cancel, and no prepayment penalties. In the first half of 2016, a Financing Estimate modeled after the Consumer Financial Protection Bureau's new "Know Before You Owe" form will be implemented to exceed current disclosure requirements.

3. **FUNDING:** It is the policy of the Program that the Partner offers fixed simple interest rates, and payments that fully amortize the obligation. Variable interest rates or negative amortization financing terms are not permitted. The Program is not required to but may offer the capability to accommodate property buyers and property owners by offering subordination of certain rights of its PACE assessment lien to the lien of a mortgage or deed of trust.

4. **OPERATIONS:** It is the policy of the Program that the Administrator and its Partner develop and provide people, processes, tools and technology necessary to support the consumer protection measures described in detail elsewhere in this policy, including: (i) risk and underwriting processes; (ii) terms and documentation delivery systems; (iii) documentation, maintenance and retrieval processes; (iv) disclosure development, delivery and acknowledgment receipt; (v) post-funding support for homeowners and other stakeholders such as real estate professionals; (vi) data security measures; (vii) privacy policy development and protections; (viii) marketing and communication oversight; (ix) protected class data and communication processes; (x) contractor management and engagement; (xi) eligible product database and/or list development and maintenance; (xii) implementation of the maximum financing amounts; (xiii) key metrics reporting; (xiv) closing and funding processes (including the ability to fulfill financing obligations); (xv) examination data production; and (xvi) implementation of procedures to identify and prohibit conflicts of interest within and associated with the Program.

5. **POST-FUNDING HOMEOWNER SUPPORT:** Establishing and operating a unit responsible for customer care that responds to inquiries, complaints, contractor and workmanship concerns, product performance questions and related matters for the lifecycle of the improvements financed is fundamental to the consumer protections that the Program provides. This policy contemplates development of a team with the skills necessary to perform inspections, meet with homeowners and contractors, investigate matters, and mediate resolutions with homeowners and contractors. It is the policy of the Program that the Partner develop capabilities to assist homeowners who are refinancing or selling their properties, and support real estate professionals providing services to refinance and sales transactions.

6. **DATA SECURITY:** The public/private partnership at the center of the Program, as well as the confidential relationship homeowners have with the Partner mandate that any market-ready Program be in robust compliance with sturdy cyber-security standards, and in particular develop secure and tested

processes that protect homeowner personal identifiable information at points of potential vulnerability, especially during the application process.

7. **PRIVACY:** The trusting and confidential relationship that exists between homeowners and the Program extends to the provider's use of homeowner data. Compliance with the Gramm-Leach-Bliley Act as well as the establishment of clear opt-in and opt-out protocols for information sharing are the pillars of the program's privacy policy. More broadly, the Program must protect and manage sensitive consumer information, respect the privacy of all homeowners, and implement robust controls to prevent unauthorized collection, use and disclosure of such information.

8. **MARKETING & COMMUNICATIONS:** Clear, informative, truthful, balanced, transparent and complete communications are essential. It is the policy of the program to prohibit practices that are or could appear to be unfair, deceptive, abusive, and/or misleading, that violate laws or regulations, that provide tax advice, that are inappropriate, incomplete or are inconsistent with the program's purpose (e.g., use of check facsimiles to dramatize the amount of PACE program financing available or presented as if a negotiable instrument). It is the policy of the Program that no provider, contractor or affiliated individual may provide a direct cash payment or other thing of value to a homeowner explicitly in exchange for such homeowner's selecting Program financing.

9. **PROTECTED CLASSES:** It is the Administrator's and Partner's responsibility to ensure compliance with all state and federal laws that cover individuals in protected classes (e.g., race, religion, color, marital status, sex, national origin, citizenship, presence of children, disability, medical condition, gender, age, sexual orientation, gender identity or expression, military or veteran status, because an applicant receives income from a public assistance program, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act.) Heightened protections for homeowners over 64 years old, such as confirming understanding of financing terms and project specifications is required of the Program.

10. **CONTRACTOR REQUIREMENTS:** Contractors and their sales persons enter into contracts with the Partner, and register with all relevant state and local licensing boards and agencies. Contractors are required to follow a code of conduct, maintain policies of insurance, post bonds, follow marketing requirements, complete training courses, among other similar obligations, all of which are designed to assure positive and productive homeowner interaction with the Program. Administrators and Partners warn, suspend, or terminate a registered contractor and/or affiliated individual from the Program based on violations of the Contractor Participation Agreement.

11. **ELIGIBLE PRODUCTS:** The Program enables and encourages homeowners to install measures on their homes which are designed but not guaranteed to save water or energy. The Program is responsible for implementing practices and controls (e.g., eligible product databases and product confirmation processes) ensuring that financing is used only for eligible measures. Program product eligibility criteria ensure that property owners are financing improvements which are industry recognized for achieving higher levels of home energy or water efficiency using performance criteria that the U.S. Department of Energy, U.S. Environmental Protection Agency, the California Energy Commission and/or other federal and state agencies or other reputable third parties have established.

12. **MAXIMUM FINANCING AMOUNT:** While the Program does not set price controls, it implements a maximum financing amount ("MFA") procedure based upon the fair market value of the eligible products and the provider's experience. The MFA sets the ceiling for amounts that can be financed. The MFA does not set pricing for installation.

13. REPORTING: Reporting the economic and environmental results of Program participation is essential for the Program, Administrators, Partners, elected officials, environmental agencies, the investment community, the real estate and mortgage industry and many other stakeholders. Metrics such as economic stimulus dollars invested, greenhouse gas reduction, the number of measures funded, the amounts funded, renewable energy production and energy savings serve this need. The Partner is responsible for producing, on at least a quarterly basis, a key metrics report for the Administrator.

14. CLOSING & FUNDING: The Program provides limited purpose financing to homeowners, and not general purpose financing that is common among traditional sources of financing. The Program has front-end (e.g., eligible product call-in requirements) and pre-funding (e.g., completion certificates and permits) procedures designed to confirm the financing dollars are used for permissible purposes. A policy requiring such procedures is essential to protecting the integrity of the program and its public policy goal of bringing efficiency and renewable energy to the housing sector. It is the policy of the Program for homeowners to obtain required permits and for the Program to disburse funds only for projects that are complete to the satisfaction of the homeowner.

15. EXAMINATION: As stated above, WRCOG will develop examination procedures to evaluate these above enumerated consumer protection policies, requiring that they be reviewed by an outside third party auditor regularly to ensure compliance by any provider operating in the marketplace served by the bond issuer.



*“Bay Area communities working together for a sustainable energy future.”*

---

## Memorandum

To: RCSA Signatory PACE Providers  
From: Jenny Berg, BayREN Program Manager  
Date: April 28, 2016  
Re: Termination Process - RCSA

---

Below is the process for termination by the Association of Bay Area Governments (“ABAG”) of the Regional Collaborative Services Agreement (“RCSA”) with a participating PACE Provider.

Section 5.2 of the RCSA provides:

Termination for Cause. Notwithstanding any other provision of this Agreement, should the PACE Provider fail to uphold any of its obligations under this Agreement in a material way, within the time and in the manner herein provided, or otherwise materially violate any of the terms of this Agreement, ABAG or a Participating Entity may, after providing the PACE Provider with a thirty (30) day cure period, immediately terminate this Agreement by giving PACE Provider written notice of such termination, stating the reason for termination; provided that the termination of this Agreement shall not automatically terminate any other agreement or contract between or among the parties.

Prior to invoking Section 5.2 of the RCSA, ABAG will afford PACE providers that are alleged to have violated any terms of the Agreement with two warnings. Upon notice of each violation, the PACE provider shall propose corrective action that is subject to approval by ABAG. Upon the third violation, ABAG will terminate the RCSA with the offending PACE Provider.