

BCC 8-15-17 #57

From: Walsh, J Doyle
Sent: Monday, August 14, 2017 3:00 PM
To: BoardRecords,
Subject: FW: [BULK] PACE
Attachments: 2017 08 14 Letter to Commissioner Long.pdf

Importance: Low

Jordan Doyle Walsh
Office of Commissioner Janet C. Long
Chair, Pinellas Board of County Commissioners
Phone: 727-464-3365

From: david@pacenow.org [mailto:david@pacenow.org] **On Behalf Of** David Gabrielson
Sent: Monday, August 14, 2017 1:56 PM
To: Long, Janet C <JanetCLong@co.pinellas.fl.us>
Subject: [BULK] PACE
Importance: Low

Dear Commissioner Long:

Please see the attached letter regarding PACE.

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David Gabrielson, Executive Director



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PINELLAS COUNTY FLORIDA



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August 14, 2017

Commissioner Janet Long, Chair
Pinellas Board of County Commissioners
315 Court Street
Clearwater, FL 33756

Via email: JanetCLong@pinellascounty.org

Dear Commissioner Long:

PACENation is the national, foundation and member funded, support organization that advocates for Property Assessed Clean Energy. Our vision is that PACE financing can be available, on a voluntary basis, for every building owner in the United States. If you are unfamiliar with us, I would invite you to visit our website: www.pacenation.org.

I and my staff are in regular contact with PACE stakeholders and market participants from the various sectors we serve: government, non-profits with shared missions, and the growing number of private sector firms that serve the PACE market. As such, we have broad knowledge of the various policies related to PACE at the state and local levels. I am writing because the proposed Pinellas County PACE Ordinance has substantial deviations from industry practice that will make a successful PACE program either very difficult or impossible to achieve.

Application of the Federal Truth in Lending Act to PACE Assessments

Before acting, please review our Consumer Protection Policies¹ which are broad and comprehensive in terms of serving the interests of homeowners. In many respects, and particularly with respect to financial disclosures and protections, they match or exceed many of those covered by the Federal Truth in Lending Act (TILA). For example, they mirror "Know Before You Owe" disclosures and provide home owners with a three day right to rescind their commitment.

Extending TILA to PACE, as TILA is currently established, has the effect of redefining PACE as a mortgage. It is not. The National League of Cities and the National Association of Counties, in their letter expressing concerns about Federal legislation (introduced but not passed) that would regulate PACE under TILA, note that for over a century, state legislatures have authorized local governments to use the property tax assessment payment mechanism to finance projects that improve property and meet a public purpose.² That is why the Florida legislature passed PACE legislation in 2010. Redefining PACE as a consumer loan product would establish a very unsettling precedent favoring mortgage lenders over local governments.

From a practical standpoint, subjecting PACE to TILA processes would force PACE local governments to operate procedurally as mortgage lenders. For example, PACE local governments would need to collaborate

¹ Available at: <http://pacenation.us/wp-content/uploads/2017/02/PACENation-Consumer-Protection-Policies-v2.0-02.17.17-with-attachments.pdf>

² Available at: <https://naco.sharefile.com/share?#/view/scd994fa207d46859>

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Pleasantville, NY 10570

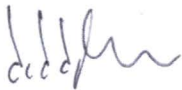
with local tax collectors to conform tax billing and collection procedures to those that apply to mortgage lenders. TILA provisions could also require local governments to meet mortgage banking licensure requirements. PACENation and its member PACE providers strongly support consumer protections. We are not averse to regulation, at the federal level, even under TILA in some form. We are working with Congress on legislation that would establish TILA provisions expressly workable for PACE, and local government assessments.

Historically, the industry as a whole has worked diligently to support the concept of PACE as a local government assessment both from the legal and policy perspectives at the federal and state levels. We have worked with the Federal Department of Housing and Urban Development and its Federal Housing Administration, as well as the Veteran's Administration, each of whom fully embrace PACE. We have worked with these entities to arrive at feasible solutions so that PACE can proceed, with strong consumer protections, while recognizing its effectiveness as a local government tool. An example of that effort is the US Department of Housing and Urban Development's Mortgagee Letter (2016-11) which finds that PACE assessments should be "... collected and secured by the creditor in the same manner as a special assessment against the property."³ This was an important federal agency finding that PACE is equivalent to any other local government assessment.

But other agencies have also clearly stated that TILA does not apply to local government tax liens and assessments. The Consumer Financial Protection Bureau is the agency charged with interpreting TILA and promulgating rules to effectuate its purposes (15 U.S.C. §§ 1602(b), 1604(a)). The regulations implementing TILA are known as "Regulation Z." (12 C.F.R. pt. 1026). The staff commentary on Regulation Z expressly excludes "[t]ax liens [and] tax assessments" from the definition of "credit," but states that "third-party financing of such obligations (for example, a bank loan obtained to pay off a tax lien) is credit for purposes of the regulation." (12 C.F.R. pt. 1026, Supp. I, Subpart A, cmt. 2(a)(14)(1)(ii)). Additionally, the Board of Governors of the Federal Reserve System has expressly commented that ordinary tax liens and tax assessments are not "credit" transactions covered by the Truth in Lending Act (15 U.S.C. § 1601 et seq.) and Regulation Z (12 C.F.R. pt. 1026). See 12 C.F.R. pt. 226 Supp. I, cmt. 2(a)(14)-1. Under these interpretations TILA does not apply to PACE assessments unless federal law were changed to extend that application- which has not occurred.

PACENation is a resource to state and local governments when crafting PACE policies and can offer numerous resources and examples within and outside of Florida. For any further inquiry regarding this correspondence please do not hesitate to contact me at david@pacenation.org.

Sincerely,



³ Available at: <https://portal.hud.gov/hudportal/documents/huddoc?id=16-11ml.pdf>