

Residential PACE Consumer Protection Task Force

DRAFT Minutes

Wednesday, August 9, 2017

Present: Anne O'Connor (Chair), Dylan Sievers (delegate of Will Nissen, Fresh Energy), Janet Johnson (MN Bankers Assn), Mara Humphrey (MN Credit Union Network), Julie Padilla (Renovate America), Logan O'Grady (Clean Energy Economy Minnesota), Craig Johnson (League of MN Cities), Chris Duffrin (Center for Energy & Environment), Ben Bratrud (delegate of Annie Levenson-Falk, Citizens Utility Board), Paul Eger (MN Realtors), Peter Klein (St. Paul Port Authority), Ron Elwood (Legal Aid), Mary Jo George (AARP), Emily Pugh (Assn of MN Counties)

Chair O'Connor called the meeting of the Task Force to order at 1:00 PM

AGENDA:

- Welcome
- Introductions
- Information Needed for Recommendation
- What is our Overarching Goal
- Contractor Requirements
- National Consumer Law Center
- TILA/RESPA/Deceptive Practices
- Public Comment
- Group Discussion
- Documents and Helpful Information
- Adjourn

The Task Force reviewed and approved minutes from the meetings of July 14, 2017 and July 27, 2017.

Information Needed

Chair O'Connor asked Members what information they need to help them reach decision points.

Comments/Questions:

- Members requested more information on other states' statutes related to Residential PACE
 - *Response:* The National Association of State Energy Officials (NASEO) is in the process of developing a matrix of where states are in terms of Residential PACE legislation and program design. They will provide the finished document to the Task Force upon completion.
 - A Member pointed out that only CA, FL and MO have active Residential PACE programs. They have found disappointment in the FL and MO statutes, but believe the CA statute is a good place to start with conversations.
- Members were interested in receiving more information on Vermont and Maine's "PACE-like" programs and how they compare to CA's model.

Overarching Goal

Chair O'Connor asked members what they believe the overarching goal of the Task force to be and how they should arrive at decisions. The question was put forward on whether consensus should be needed for recommendations stemming from the Task Force.

Comments/Questions:

- Ideas from various members:
 - First, consensus should be defined.
 - Members were unsure at this point if consensus could/should be reached on items. The Task Force may get there, but also may have to agree to disagree.
 - The Task Force should have a goal to agree to some main points
 - There are some things that consensus could be found on, but they do not want to preclude the ability to define best practices that not everyone agrees to.
 - Treat this task force similar to a legislative committee wherein a proposal is brought forth and items are voted on line-by-line at the end.
 - Write a consensus report with a section detailing things that could not be agreed to

Contractor Requirements

Charlie Durenberger, Director of Licensing and Enforcement with the Department of Labor and Industry (DLI), discussed contractor requirements enforced by DLI. There are 11,000 contractors licensed in MN. He is concerned that these type of programs tend to attract criminals and scammers. Charlie informed the group that there are eight categories of "special skill" contractors that do not need to be licensed.

One of the benefits of using a licensed contractor is the ability to access the Contractor Recovery Fund, which compensates homeowners in MN who have suffered due to fraudulent practices or failure of performance from the contractor. Under this fund, individual homeowners may receive compensation up to \$75,000 with a combined limit of up to \$300,000 per contractor. There is no recourse for the homeowner if an unlicensed contractor is used.

Comments/Questions:

- A Member commented that all contractors working with Residential PACE have to be licensed according to the current PACE statute.
- *Question:* If an exemption from the list of “special skills” were called out specifically for PACE, shouldn’t this be a broader conversation for all contractor areas?
 - *Response:* Charlie agreed that scams can happen outside of Residential PACE and that this is a larger problem in the industry. There is a nationwide problem with people attracted to this type of work.
- A member of the audience with the MN Mechanical Contractors Assn pointed out that if someone already carries a different type of license, they may not necessarily need to also be licensed as a contractor.
- *Question:* Where the exemptions exist in statute
 - *Response:* Minn. Stat. [§326B.805](#)
- *Question:* What can be done to prevent and enforce against bad actors?
 - *Response:* Action can only be taken when there is a proven bad actor.
 - *Response from Renovate America:* Renovate America provides and administers live calls with consumers while they are in the process of signing-up through the contractors.
- *Question:* Regarding the “special skills” exemptions from licensing, a consumer would know who they are dealing with (the contractor specifically), but who are contractors representing under the PACE model?
 - *Response from Renovate America:* Contractors represent their company. Renovate America simply provides the software tool that provides a financing option. They have their own specific requirements regarding what contractors can/cannot represent and can boot bad actors out of their system. Approximately 80 contractors have been removed from Renovate America’s network so far.
- *Question:* Are most PACE-related jobs coming about through cold calls by contractors or requests by the homeowners?
 - *Response from Renovate America:* Both. 70% of the projects are replacements. After natural disasters, they see door-to-door solicitations just like any other repair projects.
 - *Response from a Member:* In instances of non-PACE related natural disaster door-to-door solicitations, the contractor is not doing the financing; they are waiting on an insurance check.
 - *Response from Renovate America:* It is important to remember that PACE also has an energy audit requirement that would help consumers make better choices
 - *Response from Charlie:* They mostly see bad actors in cold-calling circumstances.
- *Question:* DLI cannot order restitution but can get the contractor to consent to reimbursement, is this true?
 - *Response:* Correct
- *Question:* What does DLI suggest is needed when looking at the contractor issues?
 - *Response:* There should be a minimum requirement that contractors are licensed through DLI, which would give the Recovery Fund as a consumer backstop.
 - *Follow-up:* Should there be additional requirements?
 - *Response:* Education materials should be available and provided to consumers.
 - *Response from Member:* These are all critical pieces, but bad actors should be a broader conversation across the contractor industry, not specific to PACE.

- *Response from another Member:* The program should have to adopt fair lending and equal opportunity disclosures. They agree that not everything can line up with TILA, but components can be adopted. Consumers must know the risks.
- *Question:* What actions can DLI take against bad actors?
 - *Response:* Revoke licenses and issues fines
 - *Renovate America:* Renovate America tracks and monitors contractor license status so they can (and do) remove contractors from their program when licenses are revoked or lost. They can also track individual employees beyond the larger company level.
- *Question:* Do contractors who offer financing required to adhere to special requirements? Are there any requirements to verify that the contractor is familiar with the financing option?
 - *Response:* Charlie was unaware of any, but there is a broad requirement for all contractors against misleading statements.
- *Statement from member:* Going back to the statements about not singling out PACE in the bad actor conversation, the PACE product is different because it could also put the consumer at risk of losing their home.

National Consumer Law Center

John Rao, Attorney with the National Consumer Law Center (NCLC), gave a presentation on their recommendations for consumer protections related to Residential PACE. NCLC's recommendations will be emailed to Task Force members along with these minutes. John highlighted these areas in the presentation:

Underwriting: John stressed that the Task Force should ensure a strong underwriting process. NCLC believes that making home-secured loans without underwriting is the wrong way to go. John also wanted to clarify from the beginning that he believes most PACE consumers are happy with their projects, by NCLC only sees the problem cases.

Right to Cancel: NCLC also believes there should be a right to cancel. MN already has examples of right to cancel with other types of home solicitations. The right to cancel should apply to both the contract with the contractor as well as the assessment. This should consist of a three-day rescission period. An ability to waive this period could be looked at in the case of an emergency replacement, similar to what is allowed under TILA, but there must be ways to avoid abuse of this.

Contractor Requirements: NCLC likes having the availability of a recovery fund. MN's fund provides a good way to address this. There should also be strict requirements on what contractors can address. In CA, they are seeing problems with contractors selling PACE as a government program and overstating that the improvements seen will pay for themselves within very specific timeframes.

National Issue: NCLC would like to see uniformity nationally. Residential PACE should be considered a credit program under TILA and Holder Rule should apply.

Assessment Requirements: Contracts should have a provision disallowing prepayment penalties. They should also not include mandatory arbitration clauses. This could be modeled after TILA.

Additional concerns: In CA, they are seeing concerns arise regarding seniors who may not have internet accounts and may not be comfortable with the internet so do not understand the iPad model used to

sign contracts. In addition, many consumers do not have ready access to the internet, therefore paper copies of contracts should be provided.

NCLC does not believe the changes in CA have solved all of the Residential PACE-related problems. For instance, even though some companies have instituted confirmation calls with the consumers, consumers have still been getting through the process that do not have the ability to repay (since there is no requirement to screen for that). The CFPB has a good guide; NCLC would like to see a nationwide ability to repay standard with the allowance for a more streamlined process for emergency repair small loans.

Disclosures: The Task Force should consider required disclosures. The terms of the contract should be given in an advance disclosure three days prior to signature. The homeowner should receive the disclosures before and work should not be performed until they've been given time to review and the right to cancel. In addition to credit terms, disclosures should describe PACE-specific aspects, such as the lien. There have been cases in CA where the homeowners (particularly seniors) are being told PACE is a government program and are not being informed that there will be a lien placed on their home. There should be a requirement that homeowners are told that if they fall behind on their assessment payment, they will pay interest on the PACE contract but also penalty and interest on their property taxes.

Availability of additional programs: NCLC would like to see a requirement that if a consumer qualifies for other types of financial assistance, such as weatherization assistance, they should be referred to those programs.

Comments/Questions:

- *Question:* What is the Holder Rule?
 - *Response:* The FTC issued this rule that sellers must include a clause in credit contracts that makes any assignee or holder of the credit contract responsible for claims the consumer may have against the seller.
- *Question:* Are underwriting requirements enough? Would the NCLC recommend exempting low-income individuals from the PACE program?
 - *Response:* A better approach to help the low-income would be to ensure a strong ability to repay. Low-income consumers can benefit from the program and certain classes of people should not be excluded. Income for the ability to repay calculation should not be based on stated income, though as there are problems with misstating income levels. There should be a verification process.
- *Question:* In addition to ability to repay, what else should be required specific to low-income and vulnerable consumers?
 - *Response:* Ensuring other weatherization and energy efficiency opportunities are available to these classes. Homeowners should be informed of these programs prior to an assessment. Most states do not permit monthly payments of property taxes. These leaves a larger amount due each time and may be harder for people to budget for. There could be a process instilled for monthly payments, although tax collectors may not be set up to deal with this. Maybe this could be offered by PACE providers.
- *Question:* Regarding NCLC's arbitration recommendation, are you advocated to get rid of or be able to opt-out?

- *Response:* Contracts should not include mandatory arbitration clauses. They should not be mandated as part of a contract.
- *Question:* Does NCLC have any recommendations for individuals with reverse mortgages?
 - *Response:* This would be a construct on the loan-to-value ratio. Most states have requirements for assessments and should include other mortgage obligations (including reverse mortgages).
- *Question:* Are there recommendations on requirements for local units of government related to fees or their liability in terms of reviewing the PACE administrators?
 - *Response:* The local unit of government plays an important role. PACE benefits by the local government setting standards for items such as minimum contractor requirements, quality assurance, and homeowner complaints. Interest rates in CA are higher than what NCLC would have thought.

TILA/RESPA/Deceptive Practices

Matt Boyer, Audit Director with the Commerce Department, gave a presentation on the Truth in Lending Act (TILA), the Real Estate Settlement Procedures Act (RESPA), and Deceptive Practices. The presentation was included in members' folders.

Comments/Questions:

- A member commented that under Minn. Stat. §429, prepayment is already allowed and cannot be penalized.
- *Question:* Are there other financing models where the administrator is not treated as a lender?
 - *Response:* Matt was not aware of others.
 - *Follow-up Statement:* This is not the same as other special assessments either since there is a third-party administrator.
- *Question:* What is meant by saying there could be false exaggerations that projects will pay for themselves?
 - *Response from another member:* A contractor could say that the project would pay for itself but stretch out the length of the loan past the useful life of the product.
 - *Response from different member:* The length of the loan is the consumer's choice, but should not extend past the useful life.
- *Question:* What remedies currently exist for consumers?
 - *Response:* Residential PACE is not currently regulated. Examples of actions that could be taken against mortgage originators include assessment of civil penalties and license revocation.
 - *Response from a member:* Local units of government should be the enforcement authority. They can approve the programs and can boot them.
 - *Response from another member:* Local governments do not have expertise in mortgages.
 - *Statement from original questioner:* They are not suggestion there should not be state regulation.
 - *Follow-up question from a different member:* Is there the ability to fine at the local government level?

- *Response from League of MN Cities:* They do not have a lot of enforcement ability.
- *Statement:* Residential PACE industry-wide has seen no foreclosures.
- *Question:* What drove the need for the TILA/RESPA Integrated Disclosure (TRID)?
 - *Response:* TRID was enacted after the housing crash.
 - *Follow-up statement:* The Task Force must keep in mind that the market is currently good. When the market turns bad and liens are attached to homes, this will be a huge problem.
 - *Response from another member:* PACE is a single issue financing method. Suggesting a risk of financing necessary replacements is contributing to the next housing crisis is wrong.
 - *Follow-up:* The Task Force just needs to be thoughtful of the market. Things are not always going to be good. Tomorrow the equity may not be there.
 - *Follow-up from another member:* It was said that PACE customers are self-selecting for necessary replacements. Many articles on Residential PACE, though, are in regards to door-to-door sales. They agree we should use the experience from the past crisis to protect against the future. The Task Force should be thinking about what we can do to protect against when things go bad again.

Group Discussion

Chair O'Connor discussed a handout that was provided in members' folders related to initial documents and disclosures that was compiled by Commerce staff. The Task Force wanted time to review the document before discussing.

Additional Comments/Questions:

- When thinking about disclosures, there cannot be too much to read and must be written at an eighth grade level. They need to be made simple.
 - *Response from Commerce staff:* That was the point of TRID. TRID brought disclosures from 15 pages down to five or six.
 - *Response from Homeownership Center in the audience:* Consumers can get education in advance. The MN Homeownership Center offers third party resources. There are some types of loans that require consumers to receive financial counseling prior to signing.
 - *Response from Renovate America:* Renovate America's disclosure form is modeled after Know Before You Owe.
- *Question:* How do you figure value, is an appraisal done?
 - *Response from Renovate America:* Renovate America uses the standard county model. Minnesota would use the county model.
 - *Response:* The County value is the same process second mortgages use.
- The Task Force should consider the component in E-sign Act that requires if documents are provided electronically, the financier must verify the consumer can accept these documents through electronic means.
- *Question:* Are homeowners currently screened for vulnerability?
 - *Response from Renovate America:* Renovate America has screening questions they use.
- *Question:* Could Commerce go after bad actors without new legislation?

- *Response:* No
- *Follow-up Question:* What would need to be in place? Registration? Licensing?
 - *Response:* This is what the Task Force is here to decide.
- *Public Comment from the MN Mortgage Assn (MMA):* Residential PACE feels like a loan with no lender taking responsibility. They cannot figure out who is originating the loan. They see an obvious answer is to license providers as lenders. If someone is providing home loans, they should be licensed and registered in NMLS.
 - *Response from MN League of Cities:* This is similar to many other assessments that already exist and is up to the consumer to utilize. Local units of government are already doing lending capacity.
 - *Follow-up from MMA:* Who is the originator? Who is the lender? What do cities get out of this?
 - *Additional Question from Member:* Are cities getting fees out of this?
 - *Response from League of Cities:* Cities can charge for their staff person's time on the project.
 - *Follow-up: Do extra fees exist?*
 - *Response from another member:* In Commercial PACE, no one charges or receives extra fees. There are some minimal fees for processing.
 - *Response from League of Cities:* They will ask their research attorney for more information.
- *Comment from Member:* Residential PACE cannot keep being compared to other special assessments. This is a loan, and is not the same as need a water main replacement or street light.
 - *Response from another member:* It is similar since a water main is the homeowner's responsibility. They can choose to finance by themselves or through a special assessment.
 - *Response from another member:* CT is considering PACE-type financing for crumbling foundations.
- *Question:* Is a private sector entity involved in other assessments?
- *Question:* Who does the energy audit? Is it performed by someone other than the company making money off the project?
 - *Response from Commerce:* The Commerce Department has guidelines for energy auditors.