

NYC Accelerator PACE Financing

PROGRAM GUIDELINES

NEW YORK CITY MAYOR'S OFFICE OF SUSTAINABILITY
NEW YORK CITY ENERGY EFFICIENCY CORPORATION

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1. Executive Summary

Property Assessed Clean Energy (“PACE”) financing is a voluntary financing mechanism that allows property owners to borrow money to make improvements to their property that reduce utility costs, energy consumption, and greenhouse gas emissions. Unlike conventional financing, loans provided through the NYC Accelerator PACE Financing Program (the “PACE Program”) are repaid in installments through a charge on the subject property’s tax bill.

The PACE Program is a platform allowing qualified lenders to bring commercial PACE financing to their customers. Building owners seeking PACE financing should visit the program website, located at <https://www1.nyc.gov/site/nycaccelerator/resources/pace.page> (“Program Website”), to connect with a qualified lender. PACE lenders must use the online application system that can be accessed through the Program Website to submit and certify all required application materials (“Online Application System”). The PACE Program is administered by New York City Energy Efficiency Corporation (NYCEEC) (the “Administrator”) on behalf of the City of New York (“City”).

These program guidelines (“Guidelines”) provide information on the PACE Program generally and describe the loan requirements, project approval requirements and application requirements for PACE financing in New York City. Many of the eligibility criteria for PACE financing in New York State are established by the [NYSERDA commercial PACE financing guidance documents](#) (“NYSERDA Guidance”). Thus, the NYSEDA Guidance is referenced occasionally in this document. The Guidelines, other PACE Program documents, and a link to the Online Application System can be found on the Program Website.

2. Qualified PACE Lenders

PACE loans must be originated by qualified PACE lenders (“Lenders”). Any entity seeking to become a Lender should review [Appendix B](#), the Lender Request for Qualifications (“RFQ”) form, which is available at the Program Website. As more fully described in the RFQ, to become a Lender, a party must enter into a Master Lender Agreement with the Administrator and the City on the current form that can be viewed on the Program Website (“Master Lender Agreement”). A list of current Lenders can be found on the Program Website.

3. PACE Loan Requirements

In addition to complying with the eligibility criteria for loans set forth in section 58-03 of chapter 58 of Title 19 of the Rules of the City of New York, an applicant must demonstrate compliance with the criteria listed in Table 1 of these Guidelines to be eligible to receive PACE financing in New York City.

Table 1: PACE Program Loan Requirements

1. The subject property must be an Eligible Site (as defined below).
2. The PACE loan must fund Energy Efficiency Improvements or Renewable Energy Systems (as defined below).
3. All Energy Efficiency Improvements must be recommended by an Energy Audit; all Renewable Energy Systems must be recommended by a Feasibility Study.
4. The project must have a Savings-to-Investment Ratio (SIR) of 1.0 or greater.
5. The PACE loan term must be less than or equal to the weighted average useful life of the measures financed.
6. All holders of mortgages or deeds of trust on the subject property must provide consent to the PACE loan and the terms thereof.
7. All required PACE loan application materials must be submitted to the Administrator by the Lender through the Online Application System.

Site Eligibility

An “Eligible Site” is a property that meets all of the following criteria:

- The property is owned in fee simple by the PACE applicant.
- The property must be an existing building.
- The property must be located in one of the five boroughs of New York City.
- The property must not be a one- or two-unit residential building.
 - 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);
 - Residential condominium units currently owned in common by a commercial entity, unless and until such time as such a unit is sold.
- The PACE applicant must not owe any taxes, civil penalties, or other debt to the City.

Eligible Improvements

The PACE loan must fund Energy Efficiency Improvements or Renewable Energy Systems.

- **“Energy Efficiency Improvement”**
 - Any renovation or retrofitting of a building that is intended to reduce energy consumption. This term does not include lighting measures or other household appliances that are not permanently fixed to real property.
- **“Renewable Energy System”**
 - 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 solar thermal, solar photovoltaic, wind, geothermal, anaerobic digester gas-to-electricity systems, fuel cell technologies, or other renewable energy technology approved by NYSERDA, not including the combustion or pyrolysis of solid waste. Please refer to the NYSERDA Guidance.

Energy Audits and Renewable Energy Feasibility Studies

If the proposed project includes an Energy Efficiency Improvement, the PACE applicant must provide an ASHRAE Level 2 or ASHRAE Level 3 Energy Audit. The Energy Audit must be provided by a contractor that meets the criteria contained in the NYSERDA 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.

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 contained in the NYSERDA Guidance ("Certified Feasibility Study Contractor").

The Energy Audit or Renewable Energy Feasibility Study must have been completed no more than 2 years prior to the earlier of the date on which the PACE financing agreement between the borrower and lender is signed, or the date on which construction of the project is commenced. An Energy Audit that is prepared 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)

The project must have a Savings-to-Investment Ratio ("SIR") of 1.0 or greater. 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. Please refer to the NYSERDA Guidance for additional details.

Loan Term

The PACE loan term must be less than or equal to the weighted average useful life of the measures financed. The weighted average useful life of the measures financed should be calculated in the Project Certification (see below).

Retroactive PACE Financing

A completed project may receive PACE financing provided that it satisfies all applicable requirements and has been completed after the later of: May 19, 2019 or 3 years prior to the date on which the PACE financing agreement between the 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 measures' useful life that elapsed between the time of project completion and the date on which the PACE financing agreement between the borrower and lender is signed.

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 form of consent available on the Program Website ("Mortgage Holder Consent"). Other forms of consent may be acceptable upon the Administrator's approval.

Complete PACE Application

Lenders must provide all required application materials on behalf of each PACE applicant using the Online Application System.

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 a Project Certification using the most recent form set forth in the Master Lender Agreement.

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. The Technical Certification may be certified by the same contractor that provided the Energy Audit or Feasibility Study. The contractor must use the form available on the Program Website.

The Technical Certification requires the following:

- Scope of Work Fields
 - An itemized description of each measure 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 measure corresponds to a measure recommended by the Energy Audit or Feasibility Study provided.
 - 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 measure.
 - Develop the projected energy cost savings by fuel type for each measure.
- Financing Fields
 - Sum the estimated total energy cost savings for the project.
 - Calculate the average useful life of the project weighted by measure cost.
 - Provide documentation/calculation supporting the additional savings.
 - The financing costs must be equal to those shown in the loan documents.
 - Calculate the CBR to be 1.0 or greater.
- Local Law No. 97 Fields
 - Develop the greenhouse gas emissions savings for the project.
 - Show the projected savings resulting from civil penalties that would not be incurred under Local Law No. 97 for the year 2019 for the project.

5. PACE Application Process

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

↓	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 Online Application System.

Process

Only Lenders can access the Online Application System. 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 Online Application System:

- 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.
- NYCEEC will be notified that a project has been generated and requires preliminary approval.

The Administrator will assess the intake fields to ensure that the subject property is an Eligible Site. 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.

If the information provided for a new project meets the criteria for an Eligible Site, the Administrator will promptly provide a preliminary approval through the Online Application System.

Defined Status: Proposed Project

A Proposed Project is a project for which a record has been created in the Online Application System and which has received preliminary approval. Once the status of a project has become a “Proposed Project,” the Lender will be notified to proceed with the application.

Phase 2: Data Gathering

Description

A Lender must complete all the required fields in the Online Application System.

Process

For a Proposed Project in the data gathering phase, a Lender must provide all information and documentation required by these Guidelines. All fields are described in the Online Application System.

Defined Status: Approved Project

If a Proposed Project meets the PACE Program Loan Requirements ([Table 1](#)), the Administrator will notify the Lender and the Project will be referred to as an Approved Project.

Phase 3: Documentation

Description

A Collection Agreement is signed by the Lender and countersigned by NYCEEC and the City, and written notice of the PACE loan is publicly recorded. Required documents may be downloaded from the Program Website.

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, NYCEEC 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 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 PACE 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.

Defined Status: Effective Project

An Effective Project is an Approved Project for which the Collection Agreement has been fully executed and for which a 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

Upon construction completion, the Lender must provide to the Administrator:

- (1) a certificate of completion attesting that construction of the project has been completed,
- (2) an updated PACE Loan amortization schedule, and
- (3) an updated Technical Certification.

A form of certificate of completion is available on the Program Website. Other forms of completion certificates may be acceptable upon the Administrator's approval.

Billing and Collection

Billing for Program Charges will begin only after the Lender has provided the documentation listed above to the Administrator to verify that the project has been completed.

As more fully set forth in the Collection Agreement, the City's Department of Finance ("DOF") collects real property taxes, fees for water usage and other obligations owed by the owner of a real property via charges ("City Charges") on the statement of account of such real property. Charges for the PACE Program ("Program Charges") will be billed as a separate line item on the statement of account for the real property benefited by the PACE loan.

Program Charges will be due semi-annually, on January 1 and July 1 of each year. The borrower must pay such Program Charges to DOF in the same manner as City Charges. If a borrower fails to pay a Program Charge when due, such Program Charge will be subject to the provisions of chapter 3 of title 11 of the New York City Administrative Code in the same manner as would an outstanding City Charge that is similarly-situated to the outstanding Program Charge.

Measurement & Verification

All properties that receive a PACE Loan are required to provide annual measurement and verification ("M&V") reporting to NYCEEC. 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 NYCEEC 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 NYCEEC for five years following project completion.

7. Program Fees

The PACE Program is designed to be a self-sustaining program administered on behalf of the City. As such, all projects are subject to fees following the making of a PACE loan and/or permanent servicing fees. Fees may be capitalized into the PACE Loan and paid as of the date that the PACE Loan has been made. Note that fees are subject to change; participation in the PACE Program will be subject to the fees set forth at the time the PACE Loan has been made. Please refer to the Program Website for a schedule of applicable fees.

8. Changes in Program Terms; Severability

NYCEEC 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 PACE Program will be subject to the Program Guidelines in effect at the time of closing.

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 responsibility to confirm that the borrower has the most recent version of PACE Program related documents. Borrowers should regularly check the documents on the Program Website.

Appendix A: Additional Terms, Conditions and Disclaimers

1. These Guidelines are being issued by the New York City Mayor's Office of Sustainability ("MOS") 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 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.
3. THIS DOCUMENT IS PROVIDED FOR REFERENCE PURPOSES ONLY AND CREATES NO LEGAL RIGHTS IN FAVOR OF ANY PROPERTY OWNER, 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.
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 and these Guidelines are each subject in all respects.
5. Any capitalized term used but not otherwise defined in these Guidelines shall have the meaning given such term in the Program Laws.
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 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. 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.
9. 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).

Appendix B: PACE Lender Request for Qualifications (“RFQ”)

Please visit the Program Website at <https://www1.nyc.gov/site/nycaccelerator/resources/pace.page>.