



FURTHER GUIDANCE REGARDING *PACE IN A BOX* FROM THE UNDERWRITING WORKING GROUP

January 22, 2021

- I. Loan to Assessed Value update**
- II. Intent and Refinance update**
- III. Undeveloped Lots update**

In order to expedite the establishment of local PACE programs in Texas and to facilitate an orderly, consistent, statewide approach to PACE design and implementation, in 2013 [Keeping PACE in Texas](#) (KPT) organized a broad-based coalition of over 130 PACE stakeholders (the “Texas PACE Coalition”) to collaborate in developing a toolkit for local governments to use in creating their PACE programs. For over a year, these volunteers worked in five working groups to establish the *PACE in a Box* model program to assist local governments in establishing a program of best practices in administration, underwriting and technical standards that are uniform, user friendly, sustainable and scalable.

The volunteers in the *PACE in a Box* Collaboration foresaw the need for a regular feedback and improvement process to prevent the documentation from becoming obsolete. Section III, INTRODUCTION TO PACE IN TEXAS, Phases of Program Development of the [PACE in a Box model program](#) states, “*PACE in a Box* programs are encouraged to work together to establish self-evaluation protocols, to keep up with developing national best practices standards, and to incorporate improvements in a regular evaluation and improvement system.”

This document is the result of the Underwriting Working Group’s 2020 review of several items highlighted by the board of KPT for review and updating as necessary in 2020. The board thanks the 49 volunteers for their work on updating the underwriting best practices below.

Language that replaces, modifies or is in addition to previous additional guidance is italicized.

Additional guidance from the Technical Standards Working Group ongoing feedback and improvement process will be released when completed.

I. APPROPRIATE LOAN TO ASSESSED VALUE RATIO (LTV)

Effective date: September 21, 2020

The purpose of this guidance is to authorize an increase in the appropriate PACE loan to assessed value from 20% to 25% and to establish guidelines for appraisals used in requests for variance from the use of assessed value to market value in determining the 25% LTV.

UPDATED RECOMMENDATION REGARDING LOAN TO ASSESSED VALUE

- 1. Set the standard LTV at no more than 25%.*
- 2. Authorize the administrator, at its discretion and in response to a request for variance, to*

waive the standard LTV and approve a variance of up to 25% of the market value of the property when justified by considering the following factors:

- a. The existing debt to assessed value of the property prior to closing the PACE loan;*
 - b. A comparison of the current property tax assessed value of the property to its “as is” market value, as determined under section 3 below; and*
 - c. The estimated post-renovation market value of the property, as determined under section 3 below.*
3. *The appraisal process must be segregated from the loan origination process. Industry specialization is highly recommended. The appraiser should have relevant experience in the subject building types/market sector.*
- a. Ideally, appraisals should not be dated older than 18 months from the date of closing. The administrator and parties must take into account case-by-case considerations, for example, the economic impact of COVID-19 or a hurricane, that could make more recent appraisals obsolete.*
 - b. A variance request for a proposed PACE assessment based on a market value must be based on the “as constructed” appraisal valuation except that an “as stabilized” valuation may be used where the property is already \geq 50% leased or occupied.*
 - c. Appraisal requirements vary according to the size of the PACE project. For financing –*
 - i. Above \$500,000: Appraisal from a Texas certified general appraiser licensed by the Texas Appraiser Licensing and Certification Board, <https://www.talcb.texas.gov>.*
 - ii. Between \$250,000 and \$500,000: Appraisal performed by an independent third party consistent with the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP) as set by the Appraisal Foundation, https://www.appraisalfoundation.org/imis/taf/standards/q_as/taf/qas.aspx; or*
 - iii. Below \$250,000: Evaluation consistent with the FDIC Financial Institution Letter, FIL-16-2016, <https://www.fdic.gov/news/financial-institution-letters/2016/fil16016.pdf>.*

See Exhibit A for additional information.

II. UPDATED GUIDANCE FOR DEMONSTRATING STATUTORILY REQUIRED INTENT TO REDUCE WATER OR ENERGY CONSUMPTION OR DEMAND FOR REFINANCING THE INSTALLATION OF QUALIFIED MEASURES

Effective date: January 22, 2021

The purpose of this 2020 updated guidance is to suggest additional methods for establishing intent prior to the installation of qualified measures.

UPDATED RECOMMENDATION REGARDING ESTABLISHING INTENT TO REDUCE WATER OR ENERGY CONSUMPTION OR DEMAND

1. This 2020 Guidance suggests the following additional factors as examples for establishing intent to reduce water or energy consumption or demand prior to the installation of the qualified measures:

- The property owner or representative sends an email to the PACE program administrator or produces other dated documentation indicating an intent to reduce water or energy consumption or demand prior to installation of qualified measures.
 - The property owner or representative submits the administrator’s preliminary application prior to installation of qualified measures.
 - *The project design qualifies for LEED certification or Energy Star Certification prior to installation of qualified measures.*
 - *The property owner or representative applied for utility rebates prior to installation of qualified measures.*
 - *The property owner or representative has engaged an Independent Third-Party Reviewer (ITPR) prior to installation of qualified measures.*
 - *Other demonstrable, dated evidence, such as communication within the property owner organization or between the property owner and architect, design build firm, etc. prior to installation of qualified measures establishing the intent to reduce water or energy consumption or demand.*
2. *Refinancing of PACE projects can occur up to 24 months after the qualified measures have been installed, provided all other PACE in a Box underwriting and technical standards are satisfied. The Savings to Investment Ratio (SIR) is calculated from the beginning of the refinancing. The life of equipment calculation starts at the time of installation.*

See Exhibit B for additional information.

III. Clarification Regarding Previously Developed Lots

Effective date: January 22, 2021

The purpose of this guidance is to eliminate the classification under the guidance dated December 31, 2017, section I, guidance (1)(b) that the structure previously torn down or scheduled for demolition must be a “commercial, industrial, or multifamily” improvement in order to establish the property as a previously developed lot excluded from the prohibition in section 399.004(b)(1) of the Texas Local Government Code.

UPDATED RECOMMENDATION REGARDING THE TYPE OF IMPROVEMENT RECOMMENDED TO SATISFY THE REQUIREMENTS OF PREVIOUSLY DEVELOPED PROPERTY ELIGIBLE FOR A PACE ASSESSMENT

Under the January 8, 2021 guidance, this phrase does not contribute to the underlying policy, is determined to be unnecessary, is therefore deleted from the December 31, 2017 guidance, and now reads:

- A developed lot eligible for PACE financing includes commercial, industrial or multifamily real property –
- 1) On which –
 - a) Exists a facility intended to be affected by:
 - i) a retrofit that includes qualified improvements;
 - ii) an addition to/expansion of the facility with qualified improvements; or
 - iii) the construction of an additional facility on the same developed lot with

qualified improvements; or

b) A previous ~~commercial, industrial or multifamily~~ structure has been demolished to make way for a new commercial, industrial or multifamily structure intended to include qualified improvements; and

2) Categorized as improved property in the County Appraisal District (CAD) records.

See Exhibit C for additional Information.

EXHIBIT A: LOAN TO ASSESSED VALUE UPDATES

Background

From 2013 to 2014 the Underwriting Working Group of the *PACE in a Box* Collaboration studied best practices across the nation and, in an abundance of caution, set a recommended Loan to Assessed Value (LTV) ratio of 20% as the appropriate standard ratio for Texas PACE projects. While the Texas PACE Act references the “assessed” value of the property, the Underwriting Working Group acknowledged that lenders typically use the “market” value of the property when determining LTV for commercial loans. Furthermore, the assessed value of properties, as determined by local tax appraisal districts, are often significantly less than their actual market value. Accordingly, the Underwriting Working Group recommended enabling property owners to request a variance of the standard LTV rule in certain cases, thereby allowing the administrator to adjust the standard LTV on a case-by-case basis. The Exhibit includes the relevant statutory language, PACE in a Box language and model local government report language.

The first request for additional guidance arose from the need for delineated factors on which to base an LTV waiver. On March 23, 2017, the Underwriting Working Group published additional guidance to ensure an informed and uniform objective review by the administrator by establishing relevant factors for waiver requests of LTV ratios greater than 20%. The 2017 guidance is incorporated into this updated version. The previous guidance is “retired.”

2020 Feedback and Review Process

In 2020, the Underwriting Working Group revisited the LTV provisions at the request of the Board of Keeping PACE in Texas (KPT) to help keep this model program essential, relevant, and inspired by best practices and experience. To that end, Steve Minick, chair of the Underwriting Working Group, convened the members of the group and all interested stakeholders. The Underwriting Working Group met virtually to discuss the LTV ratio on June 19 and July 28. Meeting notices and meeting minutes were distributed to all meeting registrants and through the full KPT email distribution list. Additional written comments were accepted through August 17, 2020.

The 2020 guidance update reflects a study of C-PACE programs in other states, along with experience in Texas where requests for variances of the standard LTV rule became more common than anticipated. As a result, the Underwriting Working Group recommended increasing the standard LTV to 25%. This 2020 Guidance also concluded that the administrator should be allowed to continue granting case-by-case variances of the standard LTV rule of up to 25% of the property’s market value based on appraisals meeting additional criteria. This guidance was approved by the KPT board on September 18, 2020 and made public on September 21, 2020.

STATUTE (2013)

Section 399.009(b) of the Texas Local Government Code (PACE Act) requires the local government in its report to provide:

(b) The method for ensuring a demonstration of financial ability under Subsection (a)(10) must be based on appropriate underwriting factors, including:

- (1) providing for verification that:
 - (A) the property owner requesting to participate under the program:
 - (i) is the legal owner of the benefited property;
 - (ii) is current on mortgage and property tax payments; and
 - (iii) is not insolvent or in bankruptcy proceedings; and
 - (B) the title of the benefited property is not in dispute; and
- (2) requiring an appropriate ratio of the amount of the assessment to the assessed value of the property.

<https://statutes.capitol.texas.gov/Docs/LG/htm/LG.399.htm>

PACE IN A BOX Section VI, GUIDE TO PACE PROJECT UNDERWRITING AND TECHNICAL STANDARDS (2014)

PACE Assessment Cost to Assessed Building Value Ratio

The PACE statute in Texas requires a PACE program to establish an appropriate threshold for the ratio of the amount of the PACE loan to the assessed value of the property as determined by the property appraisal district. The lower the ratio of new debt (the PACE assessment) to the value of the property, the less risk that the additional debt burden of a PACE assessment becomes a burden to the overall economic function of the property.

In some circumstances, there may be other reasons an investment greater than 20% of the assessed value would make good business sense to a property owner and private lender, particularly in the industrial sector where investment in modern, efficient equipment may turn a struggling business with water and/or energy intensive processes into a vibrant business that increases local employment. PACE assessments can enable businesses to save not just operating expenses through reduced utility use, but also to meet other challenges such as water and energy reliability in the face of storms and peak energy shortages. Similarly, the cost of any federally mandated changes in equipment that might otherwise force a stable business to close could be managed instead through PACE assessments. Finally, the new Texas Water Plan relies extensively on private sector conservation and *PACE in a Box*, with careful flexibility can assist businesses toward this goal. In these circumstances, the property owner and lender can seek a waiver of the *PACE in a Box* general rule:

General Rule - The amount financed using a PACE assessment cannot exceed 20% of the assessed value of the property.

Waiver - If the PACE assessment is funded using a third-party lender, the for-profit property owner and lender may request a waiver to exceed the 20% cap. The justification for the exception must be reasonable, clearly understood by all parties, and address the interests of tenants and future property owners.

EXHIBIT B: ESTABLISHING INTENT TO REDUCE WATER OR ENERGY CONSUMPTION OR DEMAND

Background

From 2013 to 2014 the Underwriting Working Group of the *PACE in a Box* Collaboration studied best practices across the nation and created the *PACE in a Box* model program of best practices for local governments establishing *PACE in a Box* regions. At that time, a significant effort to facilitate PACE financing before construction was undertaken in response to feedback on the difficulties in early adopter programs where financing was not available until after construction.

A request for additional guidance on how to establish intent arose in 2017 when interest in obtaining PACE financing after qualified measures had been installed. The Texas PACE Act requires that the qualified measures are “intended to decrease water or energy consumption or demand...” the [FURTHER GUIDANCE REGARDING PACE IN A BOX FROM THE UNDERWRITING, TECHNICAL, FINANCIAL PLATFORM AND LENDING WORKING GROUPS December 31, 2017](#) (part IV) recommended that the property owner email the administrator written intent and fill out the administrator’s preliminary application prior to construction so that intent was memorialized and dated and filed with the administrator prior to construction. This 2017 guidance is incorporated into this updated version. The previous guidance dated 12/31/2020 is “retired” and replaced with this January 22, 2021 guidance.

2020 Feedback and Review Process

Property owners and PACE capital providers indicate that the 2017 guidance is no longer adequate in areas where the preliminary application is not available (areas where no program is yet established) or where intent existed prior to the installment of the measures, but was not established in the manner established in the December 31, 2017 guidance. Therefore, the KPT board asked the Underwriting Working Group to consider additional methods for establishing intent. To that end, Steve Minick, chair of the Underwriting Working Group, convened the members of the group and all interested stakeholders. The Underwriting Working Group met virtually to discuss the LTV ratio on June 19 and July 30. Meeting notices and meeting minutes were distributed to all meeting registrants and through the full KPT email distribution list on August 11, 2020. Additional written comments were accepted through August 17, 2020.

Recommendations for updating the *PACE in a Box* guidance regarding the Texas PACE Act’s intent requirement varied widely - from not making any changes to the guidance to implying intent for every PACE project. The board determined that, absent clarification from the legislature, the property owner must demonstrate the required statutory “intent to reduce water or energy consumption or demand” prior to the installation of a PACE project. The board approved the additional suggestions of methods for doing so in this guidance. Within the collaborative effort, there was broad-based support for additional methods for establishing intent.

There was also focus on how far back refinancing should be allowed when intent is established. Suggestions ranged from not permitting refinancing to no limits. There was acknowledgement that the ability to provide documentation supporting the statutory and programmatic requirements was practically limited to between two and three years. For purposes of the 2020 feedback and improvement process, the Underwriting Working Group recommends allowing refinancing up to 24 months provided all *PACE in a Box* requirements can be met.

STATUTE (2013)

Section 399.002 of the Texas Local Government Code (PACE Act) requires:

DEFINITIONS. In this chapter:

- (1) "Local government" means a municipality or county.
- (2) "Program" means a program established under this chapter.
- (3) "Qualified improvement" means a permanent improvement fixed to real property

and intended to decrease water or energy consumption or demand, including a product, device, or interacting group of products or devices on the customer's side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature.

<https://statutes.capitol.texas.gov/Docs/LG/htm/LG.399.htm>

DECEMBER 31, 2017 SECTION IV FURTHER GUIDANCE REGARDING INTENT

Property owners must communicate their intent in advance in writing to the administrator. Completing an eligibility check on the administrator's website enables a property owner access to a preliminary application. This is the recommended form for indicating intent to utilize PACE financing.

<https://www.keepingpaceintexas.org/wp-content/uploads/2018/01/FUTHER-GUIDANCE-.pdf>

EXHIBIT C: TEXAS PACE DOCUMENTS - DEFINITION OF UNDEVELOPED LOT

Background and 2020 Feedback and Review Process

Section 1 of the December 31, 2017 guidance regarding how to define an undeveloped lot included a phrase that limited the definition of previously developed property improvements to those that are classified as “commercial, industrial, or multifamily”. As property owners, developers, and capital providers applied the 2017 guidance to potential PACE projects, they began asking questions. It became evident that this classification type of the prior improvement (commercial, industrial or multifamily) is restrictive without contributing to the underlying policy goal of the 2017 guidance or the statutory prohibition in Section 399.004(b)(1). After review, the Underwriting Working Group recommends deleting the phrase from the December 31, 2017 Guidance Section 1. The section stands as amended. <https://www.keepingpaceintexas.org/wp-content/uploads/2018/01/FUTHER-GUIDANCE-.pdf>

STATUTE (2013)

Section 399.004 of the Texas Local Government Code (PACE Act) states:

Sec. 399.004. AUTHORIZED ASSESSMENTS. (a) An assessment under this chapter may be imposed to repay the financing of qualified projects on real property located in a region designated under this chapter.

- (b) An assessment under this chapter may not be imposed to repay the financing of:
- (1) facilities for undeveloped lots or lots undergoing development at the time of the assessment; or
 - (2) the purchase or installation of products or devices not permanently fixed to real property.

<https://statutes.capitol.texas.gov/Docs/LG/htm/LG.399.htm>

***PACE IN A BOX* Section VI, GUIDE TO PACE PROJECT UNDERWRITING AND TECHNICAL STANDARDS (2014)**

Section VI of the *PACE in a Box* model document states:

Properties that are statutorily ineligible for PACE assessments include:

- Undeveloped lots or lots undergoing development at the time of the assessment; and
- Government owned real property.