

## **New York City Department of Finance**

### **Notice of Adoption**

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of Finance by sections 1043 and 1054 of the New York City Charter and Local Law number 96 for the year 2019, that the New York City Department of Finance (“DOF” or “Department”) promulgates and adopts Chapter 58 of Title 19 of the Rules of the City of New York, regarding the Sustainable Energy Loan Program (“Program”) within the City of New York (“City”).

This rule was proposed and published on October 21, 2020. A public hearing was held on November 30, 2020. After reviewing a comment noting that the rule did not specify the ownership of the PACE Charge Lien, subdivision (e) of section 58-07 of the rule was amended to clarify that the Lender is the owner of the PACE Charge Lien.

### **Statement of Basis and Purpose**

In 2009, the New York State Legislature enacted General Municipal Law Article 5-L, which authorizes municipalities within New York State to create and administer Property Assessed Clean Energy (“PACE”) financing programs. Such programs offer financing to property owners to fund energy efficiency and renewable energy projects on existing commercial properties, based upon a property owner’s agreement to have a separate charge placed on the annual tax bill for the subject property.

In April 2019, the New York City Council enacted Local Law number 96 for the year 2019 (“LL 96/2019”), codified at Chapter 30 of Title 11 of the Administrative Code of the City of New York (the “Administrative Code”), which established the Sustainable Energy Loan Program (“Program”) for commercial properties in New York City. The Office of Long-Term Planning and Sustainability coordinates the Program, and, in consultation with the New York City Department of Finance (“DOF”), a third-party administrator under contract with the City administers the Program. The Program is intended to help property owners reduce energy consumption and operating costs, create a healthier occupancy environment, increase the value of their buildings, and comply with recently enacted City legislation establishing greenhouse gas emissions limits for buildings within the City. Program Guidelines established by the third-party administrator can be found here: [nyc.gov/PACE](http://nyc.gov/PACE).

Under the Program, pre-qualified lenders will offer PACE loans, which are repaid through a separately listed charge on the tax bill for the real property benefited by such loans. PACE charges are non-accelerating, but remain payable by any successor owner of the subject real property until paid in full. Pursuant to section 11-3005(a) of the Administrative Code, a PACE loan constitutes a lien upon the real property benefitted by such loan (“PACE Loan Lien”). The PACE Loan Lien arises at the inception of the loan. Section 58-06(c) of this rule specifies how notice of the PACE loan is provided to the public. In contrast, a PACE Charge Lien is a lien arising from the nonpayment of a PACE charge separately listed on the real property tax bill. DOF will enforce repayment of PACE loans utilizing the same procedures available for

collection of real property taxes and other charges, including through tax lien sales. Lenders have all lawful mechanisms to enforce repayment of such loans.

These rules set forth the procedures for administration of the Program within the City. Pursuant to LL 96/2019, these rules provide:

- Eligibility criteria for PACE loans;
- The terms and conditions for the collection and remittance of loan payments;
- Reporting and filing requirements related to such loans; and
- Certification criteria for persons conducting energy audits and renewable energy system feasibility studies as required by Chapter 30 of Title 11 of the Administrative Code.

DOF's authority for these rules is found in sections 1503 and 1043(a) of the New York City Charter, Chapter 30 of Title 11 of the Administrative Code, and Executive Order No. 60, dated August 31, 2020.

New material is underlined.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in these rules, unless otherwise specified or unless the context clearly indicates otherwise.

### **Amendment to Rule**

Section 1. Title 19 of the Rules of the City of New York is amended by adding a new chapter 58 to read as follows:

#### **CHAPTER 58: SUSTAINABLE ENERGY LOAN PROGRAM**

##### **§ 58-01 Purpose.**

a. The purpose of the Sustainable Energy Loan Program is to assist property owners within New York City in making improvements to their property that save energy and utility costs.

b. These rules establish eligibility criteria for loans, the terms and conditions for the collection and remittance of loan payments, reporting and filing requirements related to such loans and criteria for persons to be certified pursuant to the Program for purposes of conducting energy audits and renewable energy system feasibility studies.

##### **§ 58-02 Definitions.**

As used in this chapter, the following terms have the following meanings:

**Administering Agency.** “Administering Agency” means the New York City Department of Finance.

**Administration Agreement.** “Administration Agreement” means the agreement memorializing the legal obligations of the City and the Administrator in administering the Program.

**Administrator.** “Administrator” means a for-profit or not-for-profit corporation engaged by the City to manage or assist in the implementation and administration of the Program.

**Applicant.** "Applicant" means any individual, corporation, partnership, limited liability company, association, agent, trust, estate or other entity that applies individually or jointly for a loan under the Program.

**Authority.** “Authority” means the New York State Energy Research and Development Authority, as defined by subdivision 2 of section 1851 of the Public Authorities Law, or its successor.

**Borrower.** “Borrower” means an Applicant that has received a Loan from a Lender.

**City.** "City" means the City of New York.

**City Charge.** “City Charge” means all taxes, assessments, sewer rents, sewer surcharges and water rents, and any other charges that are made a lien subject to the provisions of chapter 30 of title 11 of the Administrative Code, and the interest and charges thereon, which may be laid or have been laid, upon real property.

**Collection Agreement.** “Collection Agreement” means the agreement executed by the City and the Administrator, and by each Lender and each Borrower, upon execution of a Program Financing Agreement. The Collection Agreement provides for the collection by the City of a Program Charge, the remittance of such Program Charge by the City to the Administrator, and the subsequent remittance of such Program Charge by the Administrator to the Lender.

**Energy Audit.** “Energy Audit” means a formal evaluation of the energy consumption of a permanent building or structural improvement to real property, conducted by a person certified pursuant to section 58-04 of this chapter, for the purpose of identifying appropriate energy efficiency improvements that could be made to the property.

**Energy Efficiency Improvement.** “Energy Efficiency Improvement” means any renovation or retrofitting of a building to reduce energy consumption, such as window and door replacement, lighting, caulking, weatherstripping, air sealing, insulation, and heating and cooling system upgrades, and similar improvements, determined to be cost-effective pursuant to criteria established by the Authority. However, “energy efficiency improvement” shall not include lighting measures or household appliances that are not permanently fixed to real property.

**Lender.** “Lender” means a capital provider, including, but not limited to, a private financing organization, a not-for-profit corporation, a community development financial institution or a public agency, that is pre-qualified pursuant to the Program Guidelines and provides financing for a Loan under the Program.

**Loan.** “Loan” means the financing provided by a Lender to a Borrower under the Program that is repaid through a separate charge on the Borrower’s Statement of Account.

**Master Transfer and Remittance Agreement.** “Master Transfer and Remittance Agreement” means the agreement executed by the City, the Administrator and the Trust, and by each Lender, that establishes the terms for the collection and remittance of Program Charges that are sold or transferred to and collected by the Trust and remitted to the Administrator for payment to the applicable Lender.

**OLTPS.** “OLTPS” means the Mayor’s Office of Long-Term Planning and Sustainability.

**PACE Charge Lien.** “PACE Charge Lien” means a lien arising from the nonpayment of a Program Charge.

**PACE Loan Lien.** “PACE Loan Lien” means a lien arising pursuant to subdivision (a) of section 11-3005 of the Administrative Code.

**Payment Report.** “Payment Report” means a report pertaining to each property benefitted by a Loan, as identified by its Borough-Block-Lot, that includes, but is not limited to, for each Loan (a) the date of the Program Financing Agreement; (b) the original principal amount of the Loan; (c) the total principal balance and accrued interest outstanding on the date of issuance of the Payment Report; and (d) the payment due to the Lender, which shall include principal and accrued interest, for the related collection date.

**Program.** “Program” means the Sustainable Energy Loan Program established by chapter 30 of title 11 of the Administrative Code.

**Program Charge.** “Program Charge” means the amount required by the Program Financing Agreement to be listed as a separate charge on the Statement of Account of the Borrower.

**Program Documents.** “Program Documents” means the Administration Agreement, the Collection Agreement, the Master Transfer and Remittance Agreement and any other document related to the administration of a Loan provided pursuant to the Program.

**Program Financing Agreement.** “Program Financing Agreement” means, with respect to each Loan, the financing agreement between the Lender and the Borrower, governing the terms and conditions of such Loan.

**Program Guidelines.** “Program Guidelines” means guidelines established by the Administrator that impose additional requirements on Lenders and Borrowers regarding the Program.

**Renewable Energy System.** “Renewable Energy System” means 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 a solar thermal, solar photovoltaic, wind, geothermal, anaerobic digester gas-to-electricity systems,

fuel cell technologies, or other renewable energy technology approved by the Authority not including the combustion or pyrolysis of solid waste.

**Renewable Energy System Feasibility Study.** “Renewable Energy System Feasibility Study” means a written study, conducted by a person certified pursuant to section 58-05 of this chapter, the purpose of which is to determine the feasibility of installing a renewable energy system. For purposes of this chapter, a “Renewable Energy System Feasibility Study” must satisfy all applicable requirements set forth in the Program Guidelines.

**Statement of Account.** “Statement of Account” means the real property tax bill issued to a property owner by the Administering Agency.

**Statement of Account Issue Date.** “Statement of Account Issue Date” means the date on which the Administering Agency issues the Statement of Account.

**Tax Lien.** “Tax Lien” means a “tax lien” as defined in section 11-301 of the Administrative Code.

**Trust.** “Trust” means the NYCTL 1998-2 Trust, a not-for-profit trust organized under the laws of the State of Delaware, or another trust as determined by the City of New York.

### **§ 58-03 Eligibility Criteria for Loan**

a. The Program may provide a Loan only for the benefit of real property located within the City of New York that is not a private dwelling as defined in subdivision 6 of section 4 of the New York State Multiple Dwelling Law.

b. To be eligible for a Loan, an Applicant must:

1. Be the fee owner of the property, provided that such owner does not owe any civil penalties, taxes or other debt to the City;
2. Enter into a Program Financing Agreement with a Lender; and
3. Comply with all project approval requirements and application requirements contained in the Program Guidelines and these rules.

c. A Loan may be provided to finance any of the following:

1. The installation of an Energy Efficiency Improvement that is:
  - i. Likely to result in savings in energy consumption, or are otherwise appropriate, as determined by an Energy Audit; and
  - ii. Demonstrated to be cost-effective according to criteria set forth in the Program Guidelines;
2. The installation of Renewable Energy Systems that are practicable, or otherwise feasible, as determined by a Renewable Energy System Feasibility Study;
3. An Energy Audit;
4. A Renewable Energy System Feasibility Study; or
5. The verification of the installation of such Energy Efficiency Improvement and Renewable Energy System.

d. The Administrator, on behalf of OLTPS, will determine that an Applicant is eligible for a Loan, pursuant to subdivision b of this section, and that an Applicant seeks a Loan for one of the purposes described in subdivision c of this section. The Administering Agency shall not be responsible for determining eligibility of Applicants or for approving Loans.

#### **§ 58-04 Criteria for Energy Audit Providers**

a. An Energy Audit must be performed by a person who meets the criteria set forth in subdivision b of this section.

b. To perform an Energy Audit, a person must be certified by:

1. The Authority; or
2. A certifying entity approved by the Authority for purposes of Article 5-L of the General Municipal Law.

c. The procedures required for receiving certification to perform an Energy Audit are set forth in the Program Guidelines.

d. The determination of certification of Energy Audit providers pursuant to this section will be made by the Administrator, on behalf of OLTPS. The Administering Agency shall not be responsible for certification of providers of Energy Audits.

#### **§ 58-05 Criteria for Feasibility Study Providers**

a. A Renewable Energy System Feasibility Study must be performed by a person that meets the criteria set forth in subdivision b of this section.

b. To perform an Energy System Feasibility Study, a person must be certified by:

1. The Authority; or
2. A certifying entity approved by the Authority for purposes of Article 5-L of the General Municipal Law.

c. The procedures required for receiving certification to perform an Energy System Feasibility Study are set forth in the Program Guidelines.

d. The determination of certification of Energy System Feasibility Study providers pursuant to this section will be made by the Administrator, on behalf of OLTPS. The Administering Agency shall not be responsible for certification of providers of Energy System Feasibility Studies.

#### **§ 58-06 Terms and Conditions for the Collection and Remittance of Loan Payments by the Administering Agency**

a. Simultaneous with the execution of a Program Financing Agreement for a Loan, the Lender and the Borrower shall become a party to a Collection Agreement.

b. The Administrator will provide written notice to the Administering Agency when a Program Financing Agreement has been executed. No later than either 30 days after such written notice or 15 days prior to the Statement of Account Issue Date following such written notice, whichever is earlier, the Administrator will provide to the Administering Agency a Payment Report for the property benefited by such Loan. Following receipt of such Payment Report, the Administering Agency will list any Program Charge as a clearly identified line item on the next issued Statement of Account for such property. Thereafter, no later than 15 days prior to each subsequent Statement of Account Issue Date, the Administrator will further provide to the Administering Agency a Payment Report for such property. Following receipt of each such Payment Report, the Administering Agency will list any Program Charge as a clearly identified line item on the next issued Statement of Account for such property.

c. Upon execution of the Program Financing Agreement and the Collection Agreement, a written notice shall be recorded in the records of the Office of the City Register or the Richmond County Clerk's Office as notice that the property is subject to the Loan.

d. The Lender is the owner of the PACE Loan Lien. The Lender or subsequent holder of such PACE Loan Lien may enforce the PACE Loan Lien pursuant to all applicable provisions of law, including article 13 of the New York State Real Property Actions and Proceedings Law.

e. The City will collect each Program Charge in the same manner that it collects each City Charge, including, but not limited to, with respect to:

1. The payment due date as provided pursuant to section 1519-a of the New York City Charter, except that a Program Charge shall not be eligible for any discount for early payment pursuant to such section; and
2. Any penalties, fees, remedies and liens provided by state and local law.

f. The Administering Agency will segregate any amount collected as payment for a Program Charge from City funds and will deposit such amount into a separate account for which the Administrator or its trustee is identified as the beneficial owner.

g. In accordance with the Administration Agreement, the Administering Agency will transmit to the Administrator or its designated trustee any amount collected as payment for a Program Charge within a calendar month no later than 15 business days after the last day of such month and will simultaneously provide to the Administrator a report detailing the amount collected for any Program Charge listed on the Payment Report.

h. In the absence of an Administration Agreement, the Administering Agency will transmit any amount collected for a Program Charge to the applicable Lender.

i. Any partial payment of a City Charge or a Program Charge listed on the Statement of Account shall be allocated to payment of City Charges and any interest or penalties thereon until such City Charges are paid in full, before any amount of such partial payment shall be allocated to any Program Charge.

### **§58-07 Collection of Unpaid Program Charges**

a. If a Program Charge is not paid when due, such Program Charge shall constitute a PACE Charge Lien on the subject property subject to the provisions of chapter 3 and chapter 4 of title 11 of the Administrative Code and other related provisions of the Charter and Administrative Code, provided however that such PACE Charge Lien shall not be eligible to be repaid pursuant to an installment agreement, including an installment agreement as described in sections 11-322 and 11-322.1 of the Administrative Code and in chapter 40 of title 19 of the Rules of the City of New York.

b. A PACE Charge Lien shall be eligible to be sold or transferred pursuant to section 11-319 only when a Tax Lien is also eligible to be sold pursuant to such section.

c. Any PACE Charge Lien sold or transferred to the Trust in a tax lien sale pursuant to section 11-319 of the Administrative Code shall be recorded as such.

d. A PACE Charge Lien shall have priority over all other liens and encumbrances on the subject property except for the lien of City Charges.

e. The Lender is the owner of a PACE Charge Lien. Notwithstanding any provision of law, the Lender or subsequent holder of a PACE Charge Lien may enforce such PACE Charge Lien pursuant to all applicable provisions of law, including article 13 of the New York State Real Property Actions and Proceedings Law.

f. A PACE Charge Lien shall be subject to all other terms and conditions set forth in the Program Guidelines and Program Documents. The collection and remittance of the proceeds resulting from any PACE Charge Lien sold or transferred to the Trust shall be subject to the provisions of the Master Transfer and Remittance Agreement.

### **§ 58-08 Project Reporting**

a. A property owner shall provide the Administrator with the annual measurement and verification data for the subject property as required in the Program Guidelines.

b. A Lender shall report on the performance of Energy Efficiency Improvements and Renewable Energy Systems installed using a Loan as required in the Program Guidelines.

c. The Administrator shall provide any Program reports, including an annual report, to the Administering Agency, as required in the Program Documents.

### **§ 58-09 Loan Reporting and Filing Requirements**

a. Upon repayment in full of a delinquent Program Charge and any related fees and interest, the Lender shall record in the Office of the City Register or the Richmond County Clerk's Office a document providing notice of release of any PACE Charge Lien on the subject property.

b. Upon repayment in full of the Loan and any related fees and interest, the Lender shall record in the records of the Office of the City Register or the Richmond County Clerk's Office a document providing notice of release of the Loan on the subject property.

c. The City, the Administering Agency and the Administrator will comply with all other Loan reporting and filing requirements as required in the Program Guidelines.