

## Garden State C-PACE Program Update: EDA Issues Preliminary Draft Program Guidelines

*Greenbaum, Rowe, Smith & Davis LLP Client Alert*

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### What You Need to Know

- On April 13, 2023, the EDA posted “preliminary draft” C-PACE program guidelines on its website and will be accepting comments on the draft guidelines until May 15, 2023.
- The C-PACE program was established as a mechanism to finance commercial renewable energy, water efficiency, and other authorized projects in municipalities throughout the state that adopt an opt-in ordinance.
- Financing through the C-PACE program can be used to address a variety of costs related to the development of eligible projects. The initial program will be limited to retrofit projects and will later be expanded to include new construction projects.

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### Background

The New Jersey Economic Development Authority (EDA) established the Garden State Commercial Property Assessed Clean Energy (C-PACE) program as a mechanism to finance commercial renewable energy, water efficiency, and other authorized projects in municipalities throughout the state that adopt an opt-in ordinance. The program’s establishment was required by an August 2021 law, enacted as part of New Jersey Governor Phil Murphy’s ongoing commitment to address the impacts of climate change.

Under the program, financing provided by “qualified capital providers” to “eligible owners” will be repaid through the collection of a separate real property tax line item levied by the participating municipality. The funds will then be conveyed by the municipality to the capital provider. The loan

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will be transferred with the sale of the property.

C-PACE program financing can be used to address a variety of costs related to the development of eligible projects. The initial program will be limited to retrofit projects and will later be expanded to include new construction projects.

### **Moving Towards an Operational C-PACE Program**

The C-PACE program will officially become operational once the EDA publishes the following four items on its website:

- C-PACE program guidelines
- Uniform assessment documents for applicants and participating municipalities
- A model municipal opt-in ordinance
- A description of the process by which a county or authorized municipality can apply to the EDA for approval of a local C-PACE program ordinance

On April 13, 2023, the EDA posted “preliminary draft” Garden State C-PACE Program Guidelines on its website. EDA will be accepting comments on the draft guidelines for a one-month period ending on May 15, 2023.

It is anticipated that draft assessment agreement forms and a model municipal opt-in ordinance form will be made available by EDA shortly for comment. These required items are discussed in the draft guidelines, which list the documents as appendices, as described below.

### **Uniform Assessment Documents and Municipal Opt-In Ordinance**

The draft C-PACE guidelines define the uniform assessment documents as consisting of: “a uniform C-PACE assessment agreement, assignment agreement, and notice of assessment, a model lender consent to a C-PACE assessment ... and any other uniform or model documents prepared by the authority and used in the Garden State C-PACE program and local C-PACE programs.”

The draft C-PACE guidelines table of contents appendices accordingly include placeholders for the following forms:

[Appendix B](#) – Model Municipal Opt-In Ordinance

[Appendix C](#) – Garden State Program Agreement (to be entered into by the EDA and participating municipality, setting forth the obligations of each under the C-PACE program)

[Appendix D](#) – C-PACE Assessment Agreement (to be entered into by the “Eligible Owner” and the municipality, where “Eligible Owner” is generally defined as a property owner seeking an EDA determination that a C-PACE project is eligible)

Appendix E – C-PACE Assignment Agreement (to be entered into by the “Qualified Capital Provider” and the municipality, where a “Qualified Capital Provider” is generally defined as a capital provided that meets the applicable EDA criteria to be designated as a Qualified Capital Provider for the C-PACE program and then is listed as such on the C-PACE website)

Appendix F – C-PACE Notice of Assessment (defined in the draft C-PACE Guidelines Glossary as “the document filed with the county recording officer in the county in which a property is located, which notifies prospective holders of an interest in the property that a C-PACE assessment lien has been placed on the property.”)

### **Application Process/EDA Determination Letter, Technical Evaluation and Technical Review**

With regard to the process for application to the C-PACE program and determination of project eligibility, the draft C-PACE guidelines provide that once EDA determines that a proposed project is eligible, EDA will issue a “determination letter,” which must be signed by the applicant and returned to EDA. The determination letter will start a twelve-month clock by which time the project financing must close.

The draft C-PACE guidelines describe a technical evaluation process consisting of a basic evaluation and, for some projects, a feasibility study, to ensure that the proposed C-PACE project is eligible. The technical evaluation must be conducted by a professional engineer or qualified energy auditor, depending on the project.

The draft C-PACE guidelines also describe a technical review which must be conducted by a “qualified technical reviewer,” generally described as a person or company which has submitted an application to EDA, been approved, and is then listed on the EDA website. The technical review includes verification that the correct technical evaluation was performed.

### **Fees**

The draft C-PACE Guidelines lay out various fees associated with the application process. They include:

- The initial application fee, which must be submitted with the C-PACE application (*\$1000*)
- The determination fee, which is the portion of the application fee paid prior to the EDA executing the determination letter, which will be refunded if the project is determined not to be eligible (*.33 % of the direct financing principal not to exceed \$25,000*)
- The closing fee, which is the portion of the application fee collected by the qualified capital provider at the time of closing of the direct financing and remitted to the EDA within 10 calendar days (*.67 % of the direct financing principal amount, not to exceed \$50,000*)

We will continue to track the status of New Jersey’s C-PACE program and will provide updates accordingly.

## Published Articles (Cont.)

Please contact the author of this Alert with questions or to discuss your specific circumstances.

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