# Garden State C-PACE Program Update: EDA Issues Draft Assessment Documents and Municipal Opt-In Ordinance

Client Alert

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## What You Need to Know

- On August 14, 2023, the EDA posted the draft assessment agreement forms and model municipal opt-in form required for the program to become operational.
- The newly released documents complement the draft program guidelines released by the EDA earlier this year.
- The EDA is accepting comments through August 21, 2023, on all C-PACE-related documents released this year. Feedback should be submitted by email.

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**Background**

The New Jersey Economic Development Authority (EDA) established the Garden State Commercial Property Assessed Clean Energy (C-PACE) program to facilitate financing of eligible commercial renewal energy, water efficiency and other authorized projects in municipalities that adopt an opt-in ordinance as part of the state's commitment to address the impacts of climate change.

As outlined in **our earlier Client Alerts on March 24, 2022 and April 25, 2023** financing under the program will be provided by "qualified capital providers" to "eligible owners" and 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 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 later expanded to include new construction projects.

We had previously advised that the C-PACE program would officially become operational following the EDA's publication of certain items on its website: Uniform Assessment Documents, a model municipal opt-in ordinance, draft C-PACE program guidelines, and a description of the process by which a county or authorized municipality can apply for approval of a local C-PACE program ordinance.

All four items have now been posted and are available for online review.

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

The Uniform Assessment Documents and model municipal opt-in ordinance are discussed in the draft C-PACE program guidelines, which list the documents as Appendices. The draft guidelines define the Uniform Assessment Documents in the glossary section 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 program guidelines include a Table of Contents that includes 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 the 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); and

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 program guidelines provide that once the EDA determines that a proposed project is eligible, the EDA will issue a "determination letter" which must be signed by the applicant and returned to the EDA. This will start a 12-month clock by which time the project financing must close.

The draft program guidelines also 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 program 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 program guidelines lay out various fees associated with the application process, including:

- The Initial Application Fee: to be submitted with the C-PACE application ($1,000)
- The Determination Fee: 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: 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. Please contact the author of this Alert with questions or to discuss your specific circumstances.

## Related Attorneys