

**DOCKETED**

<b>Docket Number:</b>	23-DECARB-01
<b>Project Title:</b>	Inflation Reduction Act Residential Energy Rebate Programs
<b>TN #:</b>	252342
<b>Document Title:</b>	Public Counsel et al Comments - on IRA Rebate Contractor Training
<b>Description:</b>	N/A
<b>Filer:</b>	System
<b>Organization:</b>	Public Counsel et al
<b>Submitter Role:</b>	Public
<b>Submission Date:</b>	9/21/2023 2:40:40 PM
<b>Docketed Date:</b>	9/21/2023

*Comment Received From: Public Counsel et al*  
*Submitted On: 9/21/2023*  
*Docket Number: 23-DECARB-01*

**Comment IRA Rebate Contractor Training**

*Additional submitted attachment is included below.*



September 21, 2023

*Via Email to [docket@energy.ca.gov](mailto:docket@energy.ca.gov)*

California Energy Commission  
Docket Unit, MS-4  
Docket No 23-DECARB-01  
715 P Street  
Sacramento, California 95814

**Re: Inflation Reduction Act Residential Energy Rebate Programs  
(Docket No. 23-DECARB-01)**

Dear California Energy Commission:

The below signed legal services providers, in conjunction with the Clean Energy Justice Coalition, write to comment on your Request for Information, Contractor Training for Inflation Reduction Act Residential Energy Rebate Programs.

Our comments are founded in our experience of assisting many victims of predatory lending related to Property Assessed Clean Energy (PACE) programs and the litany of consumer abuses they suffered. We strongly oppose the use of home improvement contractors in the marketing of the HOMES and HEEHRA rebate programs to the extent that is envisaged. In our experience, allowing home improvement contractors to sell their services with the promise of rebates for work that will be of direct benefit to that contractor is asking the fox to guard the henhouse and can only lead to consumer harm. Moreover, we are deeply concerned that we will see an associated uptick in PACE and other high cost loan originations sold by contractors on the false

promise that rebates will wipe out those obligations, that will result in unaffordable debt burdens to the low income BIPOC communities we serve.

We set out below the types of consumer harm we have seen so that the Commission is well informed as it designs contractor training. We also lay out essential consumer safeguards that we urge the Commission to adopt as part of its implementation of the HOMES and HEEHRA rebate programs.

### **Misrepresentations in selling**

The business model of residential PACE program administrators relied on home improvement contractors going door to door selling green home improvements tied to PACE financing products. In the early days of residential PACE, many of the consumers we saw had been sold PACE improvements by contractors who touted PACE as a “free government program.” The fact that HOMES and HEERHA are federal programs raises concerns that similar misrepresentations will be made by contractors in this context. By the time homeowners realized PACE was not a free program, they were already obligated to pay huge sums, often tens of thousands of dollars that they could in no way afford.<sup>1</sup> The fact that the HOMES and HEERHA programs specifically target low-income households gives us great pause: while the rebates can be generous, we are concerned that high pressure and misleading sales tactics will draw many low income and BIPOC households into unaffordable obligations that cannot be reimbursed.

Other common misrepresentations PACE victims reported contractors had made included that utility savings would pay for the cost of improvements or, in relation to solar installations, the utility company would pay the homeowner more than the cost of improvements because of the energy the homeowner would be supplying to the grid. For most of the homeowners we served, those energy savings never materialized.

### **Recommendations to protect consumers**

- Contractors should not be allowed to market these rebates, especially not door-to-door
- Contractors should not be able to sell any financing, or encourage low income people to finance improvements, in conjunction with these rebates.
- To the extent any contractor is allowed to inform consumers about rebates, those contractors must be vetted and certified, and their name and license number published in a public and easily accessible list.

---

<sup>1</sup> Under PACE programs, homeowners pay off the loans via their property taxes, which often meant notice of the homeowners obligations were delayed by a year or more in line with the property tax bill cycle. In the most egregious cases we have seen property taxes increased by factors of over 20; for example one client was paying \$465 a year until her PACE assessment pushed her tax bill to \$10,300.

- Vetting should include reviewing the licensing records with the Contractors State Licensing Board within California and any other state with similar licensing. No contractor should be approved who has been subject to any CSLB action.
- To the extent any contractors are allowed to market these rebates, those contractors should be required to sign up to a contractor's code of conduct where they explicitly agree to adhere to the consumer protections recommended herein.
- All contractors should be bonded.
- Rebates should be sent directly to the consumer, not to the contractor.

### **Ability to pay**

Prior to April 2018, when ability to pay requirements were enacted, contractors sold PACE loans to low-income and BIPOC homeowners without any thought to whether the homeowners could actually afford to make the resulting payments. Consequently, countless homeowners subsisting on fixed low incomes were faced with unaffordable high mortgages and property taxes and fell into foreclosure.

Many homeowners were also subject to loan stacking, where contractors – not satisfied with encumbering homes once – returned multiple times to extract as much money as possible from the homeowner. The effect has been devastating for our clients: of Public Counsel's 350 individual PACE victim clients, over 100 had multiple stacked liens, including one client with seven separate PACE liens. In other instances, contractors arranged PACE financing combined with other non-PACE financing.

For example, Mr. H was 61 years old and living with cerebral palsy on a fixed income when he was pressured into signing multiple home improvement and financing contracts. The contractors did not disclose the true nature or terms of the financing agreements but, instead, led Mr. H to believe that he was entering into a government program that forgave the debt after a certain period of time. In the end, the contractor signed Mr. H up for \$130,000 in loans – one PACE loan and three private loans including a Benji loan offered through Renovate America – even though they knew Mr. H could not afford to pay back to loans. The PACE loan alone caused Mr. H's annual property taxes jump from about \$2,200 to over \$10,500 and put him in jeopardy of losing his home.

In another example, an L.A. County senior citizen living on social security was preyed upon by a contractor salesperson who sold her a new roof that they said would be within her small budget. Over the course of the next year, sales people kept coming back to the homeowner, soliciting additional work and inducing her signature on contracts and financing documents by misleading the woman into believing the work would all be within her budget. Eventually, the woman learned she had taken out four loans, three through PACE programs, and one with a private financing company. Instead of the affordable monthly payment she thought she was incurring, she was being billed more than half her social security income.

#### Additional recommendations to protect consumers

- Ability to pay analyses should be completed by an independent third party to ensure any consumer agreeing to home improvement work has the ability to pay for the improvements up front and wait for a rebate to be issued.
- To the extent contractors are ever used to perform ability to pay determinations, they should be trained in how to complete such an analysis and the Commission should review the ability to pay determinations to ensure contractors are completing them correctly and in good faith.
- Consumers should be screened for eligibility for other programs such as Low Income Home Energy Assistance Programs, ideally by an independent third party; to the extent contractors are involved, they should be trained in available programs and their eligibility criteria.
- Collect rebate data that includes the name of the contractors, including sales people and the individuals who completed the work to allow for effective monitoring.
- Monitor rebate applications to spot when homeowners apply for rebates multiple times and investigate the contractor's practices.

#### **Speed of transactions and use of electronic signatures**

One of the hallmarks of predatory PACE practices was the speed at which high cost transactions took place. Contractors signed up homeowners on their doorsteps using handheld devices that are not conducive to meaningful examination of contracts and related disclosures. Many of the PACE victims we have seen reported that they thought they were electronically signing to allow a credit check, or to see if they were eligible for financing, when in fact they were signing finance documents. We have seen numerous cases of outright fraud where contractors created email addresses for homeowners and then accessed contracts using that email address to sign for the homeowner without their knowledge or consent. In addition, we have seen DocuSign signature trails where the time between a user first accessing complex contractual documents and full execution of numerous component parts was under one minute. In some of the most egregious cases, contractors' completion certificates were also signed at the beginning of the transaction, before any work was started.

#### Additional recommendations to protect consumers

- Ensure there is a significant cooling off period between first contact with the homeowner and the start of any home improvement work by the contractor.
- In the cooling off period, ensure the homeowner is given paper copies of documents spelling out the complete cost of the project and their obligations in easy to understand language and in the consumer's primary language.
- Avoid electronic signatures.

- Ensure calls are made to the consumer by an independent third party to make sure they understand the nature of the work to be done, the cost, their obligations, and the procedure to applying for the rebate, before any work is started.

### **Shoddy work, no work and unnecessary products sold**

Public Counsel alone has seen over 350 homeowner victims with over 500 PACE liens between them. Of the 314 liens for which we have recorded data relating to completion of work: twenty-five percent (25%) had substandard work; thirty-two percent (32%) of projects were incomplete; five percent (5%) were projects where the only work done was demolition; and in fifteen percent of cases (15%) no work was *ever* undertaken. For example, Mr. & Mrs. H., monolingual Spanish speakers living in South East L.A., were approached by a home improvement contractor to discuss improvements to their property. The contractor told them they qualified for a loan for tens of thousands dollars, which the family knew they could not repay, so they decided against proceeding with any home improvements. When their mortgage increased by \$1,000 a month, they investigated and discovered that the contractor had forged financing and placed a lien against their home through the PACE program, despite no work having been consented to or undertaken.

We have also seen multiple cases where entirely unnecessary “improvements” were made, such as perfectly effective dual pane windows and energy-efficient water heaters being replaced with essentially the same products. In one example, despite already having two window air conditioners and a swamp cooler, Mr. E and his disabled wife, neither of whom speak English, were persuaded to purchase a central air conditioner by a Spanish-speaking salesman, who dropped by their home in the Central Valley. They were told the unit would be more efficient and less expensive, costing only \$100 a month after an initial payment of \$2,500. Instead, without their knowledge, an English-speaking employee who later visited them arranged a financing agreement with Renovate America and the Western Riverside Council of Governments for \$18,749, or \$35,617 over the term of the loan. Ultimately, the home’s energy bills actually *increased* by 30%, and nearly 100% during hot and cold months. Their mortgage increased by \$400 a month, far more than the homeowners could afford.

### **Additional recommendations to protect consumers**

- Require written energy audits that demonstrate the need for home improvements.
- To the extent any contractors are allowed to market rebates, ensure they screen consumers for eligibility for other programs before any work is agreed.
- Incorporate training requirements around projecting energy savings. Our preference would be that, if contractors project energy savings for a consumer, they should be held accountable for the difference between the savings projected and realized. Alternatively, contractors should be trained to make clear, and provide written disclosures, that clearly

state that no energy savings are guaranteed if a low income homeowner undertakes the proposed work.

- Ensure work is inspected and a “finaled” permit is in place before contractors are paid for any work where a rebate will be sought.

### **Price-gouging**

Like most consumers, the low-income people targeted by these new rebate programs do not have a clear understanding of what home improvements should cost. From the PACE victims that have presented their cases to us, in the vast majority of the cases where any work was completed the work was overpriced. For example, we have seen tankless water heaters being installed for upwards of \$15,000 in a small single family home.

### **Additional recommendations to protect consumers**

- Establish standard cost price ranges for consumers and ensure these are well-publicized, easily and publicly accessible and provided to the consumers before any home improvement contract is signed.
- Only allow contractors who agree to adhere to the price guides to benefit from rebated work.

### **Targeting of elders and monolingual Spanish speakers**

A large proportion of our clients have been elderly and/or monolingual Spanish speakers, in addition to being low-income. For example, we have dealt with numerous no-work cases perpetrated by a contractor who targeted dozens of monolingual Spanish speaking homeowners with the promise of building accessory dwelling units that would provide the homeowners income in retirement. Instead, these homeowners were saddled with PACE liens for up to \$100,000, with absolutely no work to show for it. Gwendolyn Lang, an elderly Homeowner in Gardena, California, living on a low fixed income was misled about the financing that she received and ended up with five separate PACE liens totaling over \$500,000 against her property and a \$28,000 annual increase to her property taxes. Her story was covered by KCRW (<https://www.kcrw.com/news/shows/greater-la/program-to-boost-clean-energy-in-la-is-leaving-some-people-homeless/effort-to-make-la-more-eco-friendly-means-foreclosure-for-some-homeowners>). In our experience, seniors like Ms. Lang are often victims of these predatory practices.

### **Additional recommendations to protect consumers**

- Ensure contractors communicate with homeowners who do not speak English in their primary language and provide all literature and materials in that language.
- Ensure all materials are written in plain language (6<sup>th</sup>-8<sup>th</sup> grade reading level) in each language.
- Ensure materials provided to elders are available in large type fonts for ease of reading.



- Ensure elders and monolingual Spanish speaking clients have additional time to review contracts and materials before any work begins.

### **General recommendations**

In general, we would recommend avoiding *any* type of incentive based structure that encourages contractors to target low-income homeowners. If that is unavoidable, we recommend tying those incentives to contractors that commit to a code of conduct with the explicit consumer protections, as enumerated above. In addition, we would recommend:

- Reaching out to the Contractors' State Licensing Board to learn about contractor abuses reported to them in association with the selling of PACE loans;
- Reaching out to the California Public Utilities Commission to learn about the Commissioners ruling and associated briefing related to enhanced consumer protections for Net Energy Metering customers;
- Set up an easy and responsive complaint system for consumers;
- Create a restitution fund to compensate consumers when contractors who mis-sell their services in conjunction with marketing rebates, akin to the (now depleted) Solar Restitution Fund administered by the CSLB.

### **Conclusion**

We thank you for your consideration of these comments. Please do not hesitate to contact us if you would like to discuss our experiences further.

Sincerely,



Stephanie Carroll  
Directing Attorney  
Consumer Rights and Economic Justice  
**PUBLIC COUNSEL**  
[scarroll@publiccounsel.org](mailto:scarroll@publiccounsel.org)

**BET TZEDEK**  
Richard Javier Maher  
Staff Attorney  
[rmaher@bettzedek.org](mailto:rmaher@bettzedek.org)

**CALIFORNIA LOW INCOME CONSUMER COALITION**

[clicc@lowincomeconsumers.org](mailto:clicc@lowincomeconsumers.org)

Jaime Levine

Executive Director

**ELDER LAW & ADVOCACY**

[jlevine@elaca.org](mailto:jlevine@elaca.org)

Erika Toriz

Executive Director

**HAVEN NEIGHBORHOOD SERVICES**

[etoriz@havenservices.org](mailto:etoriz@havenservices.org)

Maeve Elise Brown, Esq.

Executive Director

**HOUSING AND ECONOMIC RIGHTS ADVOCATES (HERA)**

[melisebrown@heraca.org](mailto:melisebrown@heraca.org)

Lisa Sitkin

Supervising Attorney

**NATIONAL HOUSING LAW PROJECT**

[lsitkin@nhlp.org](mailto:lsitkin@nhlp.org)

Alysson Snow (in their individual capacity. Institutional affiliation listed for identification purposes only.)

University of San Diego School of Law

[Snow.esquire@gmail.com](mailto:Snow.esquire@gmail.com)