

OPEN C-PACE FINANCING PROGRAM HANDBOOK

Introduction

The Energy Improvement Corporation (EIC) offers the Open C-PACE Program (“Open C-PACE” or the “Program”) to eligible property owners to provide financing for energy efficiency or renewable energy improvements to existing buildings and new construction. EIC is a local development corporation and a New York State nonprofit that administers Open C-PACE on behalf of its member municipalities to help improve the building stock and support the growth of a clean energy economy.

The Program provides an alternative to traditional equity or unsecured loans by using an innovative form of financing called Commercial Property Assessed Clean Energy (C-PACE). Open C-PACE is a competitive, open market model in which third-party capital providers approved by EIC offer direct funding to the property owner for up to 100% of the cost of the energy improvements. The loan is secured by a special assessment on the Property (a “Benefit Assessment Lien”) and is repayable by the property owner in installment payments over a term not to exceed the useful life of the Improvements.

The Program is authorized by New York State General Municipal Law Article 5-L and must be enabled at the local level. Counties and municipalities with tax lien authority interested in extending Open C-PACE financing to their commercial property owners must adopt a Local Law establishing the Program in the municipality and enter into a Municipal Agreement with EIC to administer the Program on its behalf.

How to Finance an Open C-PACE Project

Section 1. Application

The Application can be found at eicpace.org and can be submitted by the property owner or capital provider. This is the initial step to determine if the property meets the eligibility requirements necessary to move toward a final approval.

Eligibility Requirements:

- The property owner may not be in bankruptcy and the property may not constitute property subject to any pending bankruptcy proceeding.
- The property owner is current in payments on any existing mortgage on the Qualified Property.
- The property owner is current in payments on any real property taxes on the Qualified Property.
- Qualifying Property Owners may be corporations (both for-profit and not-for-profit), limited liability companies, partnerships, real estate investment trusts (REITs), or any Property Owner other than a natural person that owns commercial real Property.

- Ineligible Properties:
 - Individually owned properties
 - Government owned property (including public universities and school districts)
- If the property is mortgaged, the mortgage holder must consent to the Open C-PACE financing, using the Mortgage Holder Consent Form found on the Program Documents page of EIC’s website.
- Such additional criteria, not inconsistent with the criteria set forth above, as the State, the Municipality, or EIC acting on its behalf, or other Financing Parties may set from time to time.

Section 2. Other Financing Parameters

- New Construction: C-PACE financing is now available for energy efficiency projects and renewable energy systems on new construction of qualifying commercial property as well as existing buildings.
- Lookback: EIC will permit refinancing and reimbursement for costs incurred within the past three years for energy efficiency or renewable energy improvements to Qualified Properties that satisfy NYSERDA and EIC requirements. EIC may consider a look back period of longer than three years on a case-by-case basis.
- Capitalized interest and interest-only periods can be financed but the length depends on the project and must be pre-approved by EIC.
- Eligible Fees: The following fees may be included in the financed amount:
 - Capitalized Interest
 - EIC Fees charged to Capital Provider (see Section 6 below)
 - Capital Provider Fees; only fees earned by the Capital Provider on the C-PACE transaction may be included, pass-through fees are not permitted
 - Legal Fees related only to the C-PACE loan
 - Note: Energy audit fees must be included in the project amount submitted for technical approval by EIC’s engineer (see Section 3A below), and should *not* be included in the Financing Fees.

Section 3. Documentation Required for Final Approval

(See Also Summary Document List in Annex 1)

A. Technical Documents - Submitted by Capital Provider

- A *Qualified Energy Audit* and/or a *Renewable Energy System Feasibility Study*, using a NYSERDA approved process as referenced in the [NYSERDA Commercial Property Assessed Clean Energy \(PACE\) Financing Guidelines](#) and/or obtained through an approved NYSERDA

or local utility qualified energy program. The audit or feasibility study must be conducted by a professional with the required credentials listed in NYSERDA's guidance document.

- *NYSERDA or Utility Co. Incentive Approval*, if applicable
- *Utility Co. Interconnection Agreement*, if applicable
- Scope of Work
 - Upon receipt of the Mortgage Holder Lender Consent (if applicable), EIC's independent engineer will assess these documents in accordance with NYSERDA's Commercial PACE Guidance Document.
 - The amount financed must be repaid over a term not to exceed the weighted average life of the improvements; such calculation must be included in the audit or feasibility study.
- Proposed improvements are required to:
 - Be permanently affixed to the property, and
 - Satisfy NYSERDA's Cost Benefit Ratio or use measures deemed cost effective by NYSERDA (refer to NYSERDA C-PACE Guidance), or
 - Be on the NYSERDA list of Commercial PACE Eligible Renewable Energy System Technologies.
- If the transaction does not close for any reason, the Capital Provider must reimburse EIC for the cost of the energy audit review.

B. Transaction Documents:

Submitted by Capital Provider with Application Package

- Administration Agreement (this is a global agreement that covers all transactions)
- Mortgage Holder Consent, if applicable (original signature and notarization required)
- Loan Data Checklist

Submitted by Capital Provider Prior to Closing

- Assignment Agreement
- Certificate of Levy of the Benefit Assessment Lien (BAL) (original signature and notarization required) (Filed by EIC post-closing)
- Assignment of Benefit Assessment Lien (Assignment of BAL) (original signature and notarization required) (Filed by EIC post-closing); plus any subsequent Assignments of BAL, if any, to be filed at the same time along with the Notice of Assignment
- Utility Data Release Form
- Finance Agreement
- Amortization Schedule (Excel Worksheet showing the calculation)
- Title Search (issued within 60 days prior to closing date)

Documents Provided by EIC to Capital Provider

- Copy of Adopted Local Law
- Copy of Executed Municipal Agreement
- Qualified Project Letter evidencing pre-approval of Project (Final project approval letter to be provided after project completion based on requirements in Section 5 below)
- EIC Counsel's Opinion (at closing)

Section 4. Closing

- Prior to closing, all documents are finalized.
- EIC will provide mailing instructions for signature pages of BAL and Assignment of BAL, and the Mortgage Holder Consent (if applicable).
- Copies of original signatures for other documents are acceptable.
- Recording the Benefit Assessment Lien and Assignment of BAL on the Land Records of the Municipality:
 - EIC may submit drafts of the BAL and Assignment of BAL to the County Clerk's office for review.
 - EIC's title search company files the executed versions upon closing.
- Filing confirmation is provided by municipal clerk and relayed by EIC to Capital Provider.

Section 5. Disbursement

- Disbursement requires the following:
 - Confirmation from NYSERDA or a utility program that the improvements were installed (if applicable),
 - A certificate of occupancy or other evidence of the completion of a satisfactory final inspection by an inspector approved by the Municipality,
 - A certificate of completion signed by the capital provider and the property owner,
 - A utility Permission to Operate notice for renewable energy generation (if applicable), and
 - Certification from appropriate entity if project is qualified in accordance with a NYSERDA-approved building standard (LEED, Energy Star, etc.). If project is qualifying through adherence to NY Stretch Code, and the locality has not adopted NY Stretch, EIC will require confirmation of compliance from the local Codes Enforcement Officer.

Section 6. Fees

EIC

- Upfront Charge: 1.5% of the Base Project Cost up to a maximum of \$200,000. “Base Project Cost” refers to the total amount of the Loan minus capitalized interest, accrued interest, and fees charged by either EIC and/or the Capital Provider. EIC reserves the right to adjust its fees at any time.
- Administration Fee: An annual rate equal to either .25%, or .20% for \$10 million or greater, or .15% for \$20 million or greater, of the Benefit Assessment (the “Administration Fee”). The Administration Fee shall be added to the interest rate payable on the Loan when calculating the Annual Installment Amount. For example, if the Capital Provider’s interest rate is 6.0%, the rate charged to the borrower and reflected in the payment schedule will be 6.25%. This fee is payable to EIC by the Capital Provider within 10 business days of receipt of payment from the property owner.
 - Please note that EIC’s Administration Fee shall be included in the interest rate used to calculate capitalized interest. Capitalized interest fees are due to EIC at closing and are nonrefundable.

Pass Through Fees

- Legal fees for Opinion of EIC’s Counsel is \$10,000 (increasing to \$15,000 as of January 1, 2023).
- Recording on the Land Records: Certificate of Levy and Lien of Benefit Assessment and the Assignment of the Benefit Assessment Lien will be \$1,200; \$300 for subsequent Assignments if filed the same day as the BAL; \$2,000 for all other subsequent Assignments* (increasing to \$2,500 as of January 1, 2023); Amendments to the BAL will be \$3,000.
 - Any additional costs associated with the recording on the Municipality’s land records of the Benefit Assessment Lien, the Assignment of BAL, Confirmation and Amendment of Benefit Assessment Lien and Payment Schedule, any subsequent Assignment of the Benefit Assessment Lien and the Release of the Benefit Assessment Lien shall be paid by the Capital Provider.

*In order to maintain the integrity of the program structure and accuracy of billing, EIC must file all Assignments.

Annex 1 - Summary Document List

<u>Document</u>	<u>Responsibility</u>
Application	Capital Provider or Property Owner
Energy Audit/Feasibility Study	Capital Provider
Scope of Work	Capital Provider
Finance Agreement	Capital Provider; reviewed by EIC counsel
Loan Data Checklist	Furnished by EIC; completed by Capital Provider
Amortization Schedule	Capital Provider; reviewed by EIC
Administration Agreement	Furnished by EIC; completed by Capital Provider; reviewed by EIC counsel
Assignment Agreement	Furnished by EIC; completed by Capital Provider; reviewed by EIC counsel
Certificate of Levy of Benefit Assessment Lien	Furnished by EIC; completed by Capital Provider; executed by Property Owner and EIC, reviewed by EIC counsel
Assignment of Benefit Assessment Lien	Furnished by EIC; completed by Capital Provider; executed by EIC and Capital Provider, reviewed by EIC counsel
Consent of Mortgage Holder	Furnished by EIC; completed by Mortgage Holder
Utility Data Release Form	Furnished by EIC; completed by Property Owner
Title Search	Capital Provider
Executed Municipal Agreement	EIC
Executed Local Law	EIC
Qualified Project Letters	EIC
Legal Opinion	EIC Counsel
Billing Instructions	Capital Provider
Filing Confirmation	EIC
Completion Documents	Capital Provider
Confirmation and Amendment of Benefit Assessment Lien (if applicable)	Furnished by EIC; completed by Capital Provider; executed by Capital Provider and Property Owner, reviewed by EIC counsel