

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; Local Law number 96 for the year 2019; and Local Law number 42 for the year 2021, that the New York City Department of Finance (“DOF” or “Department”) promulgates and adopts Amendments to 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 amendment was proposed and published on June 16, 2021. A public hearing was held on July 19, 2021. In response to a question raised at the public hearing regarding the roles of the owner of the leasehold interest and the owner of the fee interest in the Program, DOF amended subdivision (b) of section 58-03 of the rule to require the consent of the fee owner when the borrower of a Program loan is an owner of a leasehold interest.

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.

In April 2019, the City of New York 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 Responsibility 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 owners of real property 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.

In 2020, the New York State Legislature enacted amendments to Article 5-L of the General Municipal Law that revised the definition of the term “energy efficiency improvement” to mean improvements to new construction of a building or renovations of an existing building and to add a definition of the term “real property”. In April 2021, the New York City Council enacted Local Law number 42 for the year 2021 (“LL 42/2021”), amending Chapter 30 of Title 11 of the Administrative Code to provide that the Program could be used for new construction as well as for renovation projects, and to add a definition for the term “real property”. As a result of these amendments, the construction of new buildings, as well as retrofits and renovations of existing buildings, can take part in the Program, and the Program may make loans to eligible owners of leasehold interests, as well as to eligible owners of fee interests.

These rule amendments add the new definitions to Chapter 58 of Title 19 of the Rules of the City of New York, and make a few technical changes to account for the definition of “real property”.

In addition, in response to a question raised at the public hearing held on July 19, 2021 regarding the roles of the owner of the leasehold interest and the owner of the fee interest in the Program, DOF amended the rule to require the consent of the fee owner when the borrower of PACE financing is an owner of a leasehold interest. Such consent will be contained in a separate agreement in which the fee owner and PACE borrower will resolve each party's responsibility under the loan.

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, Executive Order No. 60, dated August 31, 2020, and LL 42/2021.

New material is underlined. [Deleted material is bracketed.]

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

Rule Amendments

Section 1. Subdivision (a) of section 58-01 of Title 19 of the Rules of the City of New York is amended to read as follows:

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

§ 2. The definitions of “energy audit,” “energy efficiency improvement,” and “statement of account” in section 58-02 of Title 19 of the Rules of the City of New York are amended to read as follows:

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 or incorporated into the construction of the property.

Energy Efficiency Improvement. “Energy Efficiency Improvement” means any improvement to real property, whether as a component of the new construction of a building or as the renovation or retrofitting of [a] an existing 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.

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

§ 3. Section 58-02 of Title 19 of the Rules of the City of New York is amended by adding a new definition of “real property” in alphabetical order to read as follows:

Real property. The term “real property” means any property, an interest in which is or is eligible to be recorded with the city register or the office of the Richmond county clerk by the possessor of such interest.

§ 4. Subdivision b of section 58-03 of Title 19 of the Rules of the City of New York is amended to read as follows:

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

1. Be the [fee] owner of the real property, provided that such owner does not owe any civil penalties, taxes or other debt to the City, and provided further that if the Applicant is an owner of a leasehold interest in such real property, the owner of the freehold interest in such real property shall agree to the Applicant’s participation in the Program;
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.

§ 5. Subdivision a of section 58-08 of Title 19 of the Rules of the City of New York is amended to read as follows:

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