The Great Lakes
Environmental Law Center

Protecting the world's greatest freshwater resource
and the communities that depend upon it

440 Burroughs Street, Box 70
Detroit, Michigan 48202
www.glelc.org

August 15, 2012

Alfred M. Pollard
General Counsel
Attention: Comments/RIN 2590-AA53
Federal Housing Finance Agency
Eighth Floor, 400 Seventh Street SW
Washington, DC 20024

Via email to RegComments@fhfa.gov and submitted through Federal eRulemaking Portal

Re: RIN 2590-AA53

Dear Mr. Pollard,

Please accept these comments from the Great Lakes Environmental Law Center (GLELC) in response to the Federal Housing Finance Agency's (FHFA) Notice of Proposed Rulemaking (NPR) concerning mortgage assets affected by Property Assessed Clean Energy (PACE) programs. These comments correspond to the concerns raised in the NPR, which are italicized below.

A. Risks PACE Programs Pose to Mortgage Holders and Other Interested Parties

1. *The mortgage holder will bear increased financial risk if the dollar amount of the first-lien PACE obligation exceeds the amount which the PACE-funded project increases the value of the underlying property. Furthermore, there is increased risk due to the variability of energy prices over time and potential that energy improvements could become obsolete over time.*

Counties and cities with PACE program experience generally acknowledge an increase in property value as a result of energy retrofits. Sonoma County, California stated that there was a collective $45 million increase in housing values due to energy efficiency improvements, including the installation of solar systems and energy-efficient windows, doors, and HVAC systems, adding security to existing loans.[1] Placer County, California and Leon County, Florida

[1] http://drivecms.com/uploads/sonomacountyenergy.org/Weekly_Report_042211.pdf. *See also* http://www.drivecms.com/uploads/sonomacountyenergy.org/Municipal%20Resources/PACE%20Manual.pdf (last visited July 9, 2012).

have also experienced increases in property values as a result of PACE-financed energy retrofits.[2] In addition, the U.S. Department of Housing and Urban Development found that home values rise an average of $20 for every $1 reduction in annual utility bills.[3] Another study by the Ernest Orlando Lawrence Berkeley National Laboratory found that homebuyers are willing to pay an additional $17,000 for a home that is fitted with photovoltaic panels.[4] The data available on the topic shows that property values consistently, and often significantly, increase with energy retrofits. Available evidence does not suggest that PACE obligations exceed the increase in the underlying property value of a PACE-financed project.

FHFA's general assertion that PACE obligations pose increased financial risk to mortgage holders is unfounded. In fact, the default rate for homeowners with PACE improvements is 0.1%, while the national average for defaults on mortgages is about 30 times higher at 3.2%.[5] This difference makes sense considering that financially stable homeowners are far more likely to purchase energy improvements than are households lacking financial stability. This low default rate combined with the increased value of energy retrofits shows that the financial risk to mortgage holders decreases relative to households without PACE-financed improvements.

More specifically, PACE administrators from Babylon, New York, Palm Desert, California, Sonoma, California, and Boulder, Colorado reported that out of 2,723 properties with PACE liens as of fourth quarter 2011, only 24 had defaulted.[6] This equates to a default rate of 0.88%, compared with the national average of 4.38% during the same time period.[7]

Furthermore, FHFA points out that predicting energy prices over an extended period of time is difficult; therefore making the relative value of an energy improvement project difficult to ascertain. While FHFA sees energy price volatility as a reason to be skeptical of PACE programs, it is actually a reason to favor their implementation. The installation of energy-efficient windows, insulation, and furnaces, for example, is beneficial regardless of the price of fossil fuels. For example, if a family whose home is heated by natural gas upgrades their furnace, windows, and insulation, the household will use less natural gas over time. And lower levels of natural gas consumption leads to lower annual utility bills. Moreover, while the price of natural gas is volatile in the short-term, it steadily rises in the long-term. In January 1981, the residential price of natural gas was $3.94 per thousand cubic feet, compared to $10.75 per thousand cubic feet in April 2012.[8] Energy upgrades help insulate homeowners from the steady increase in energy prices.

Concerns regarding the fact that energy-efficient upgrades may become obsolete in the future, thus reducing home value, are similarly irrelevant. Technology always has the potential to advance over time, but that has never stopped consumers from purchasing the best available technology in the moment. For example, it is common knowledge that computers and cell phones evolve at rapid rates, yet consumers constantly purchase these items because of the benefits they

---

[2] FHFA RIN 2590-AA53

[3] Pandolfi, Keith, *Boost Home Value, Get Cheaper Bills*, CNN Living, March 4, 2008, available at: http://articles.cnn.com/2008-03-04/living/solar.power_1_solar-energy-devices-rebate-program-solar-panel/2?_s=PM:LIVING (last visited July 11, 2012).

[4] Hoen, Ben, et al., *An Analysis of the Effects of Residential Photovoltaic Energy Systems on Home Sales Prices in California*, Ernbest Orlando Lawrence Berkeley National Laboratory, April 2011, report summary available at: http://eetd.lbl.gov/ea/emp/reports/lbnl-4476e-rs.pdf (last visited July 11, 2012).

[5] PACE Summary: http://pacenow.org/blog/wp-content/uploads/PACE-2-Pages-7-20-11a.pdf (last visited July 11, 2012).

[6] FHFA RIN 2590-AA53

[7] *Id*.

[8] U.S. Energy Information Administration, report available at: http://www.eia.gov/dnav/ng/hist/n3010us3m.htm (last visited July 17, 2012).

provide, such as increased communication abilities. The same idea applies to energy upgrades; while it is probable that more advanced solar panels, insulation, furnaces, wind turbines, and windows will be developed in the future, there is no reason to hinder a consumer's present ability to purchase beneficial technology. Energy-efficient furnace and window upgrades, for example, will save consumers money relative to their previous furnace and windows. What future technology may offer is not presently relevant and can be addressed by the homeowner or subsequent purchaser when such technology is available.

In addition, homes last much longer than the time it takes to pay off energy efficiency upgrades. As of 2009, the age of the average American home was 36 years[9], while PACE loans are paid off in no more than 20 years.[10] This means that technology upgrades will continue to provide financial benefits to a given property's occupants long after the upgrade is paid for. Once the technology is paid off, it benefits subsequent homeowners, while FHFA alleges a decrease in property value over time.

2. *The information available does not reliably indicate that PACE-funded projects will generally increase the borrower's ability to repay his or her financial obligations, including mortgage loans.*

Available data suggests that households with PACE-financed energy improvements experience increased cash flow over time, thereby increasing a borrower's ability to service his or her outstanding debt obligations. An estimate by the NRDC suggests that "over the useful life of a retrofit, homeowners can generate cash savings of $5,000 to $14,000."[11] These savings stem from reduced utility payments as a result of the energy retrofits. Solar panels, wind turbines, improved insulation, and energy-efficient appliances all contribute to reduced dependency on the power grid. The result is increased monthly cash flow that can be used to service other obligations, such as mortgages.

3. *Proposed underwriting standards are complex, incomplete, and impractical to implement, and they would not adequately protect mortgage holders such as the Enterprises from financial risk.*

As the GLELC has previously stated, federal-level PACE program restrictions and conditions are not necessary because individual states and municipalities are better suited to address local concerns and market conditions. Some states and cities have already successfully implemented their own programs and guidelines.[12] For example, Palm Desert, California has implemented guidelines that establish a minimum "value-to-lien ratio" for property owners

---

[9] U.S. Department of Housing and Urban Development, http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2010/HUDNo.10-138 (last visited July 17, 2012).

[10] http://pacenow.org/blog/about-pace/ (last visited July 17, 2012).

[11] The Natural Resources Defense Council et al., *Property Assessed Clean Energy ("PACE") White Paper*, Updated May 3, 2010, available at: http://pacenow.org/documents/PACE%20White%20Paper%20May%203%20update.pdf

[12] Berkeley, California: http://www.cityofberkeley.info/ContentDisplay.aspx?id=27076
Boulder, Colorado: Letter from Boulder County Board of County Commissioners, June 29, 2010, available http://www.climatesmartloanprogram.com/pdf/CSLP-Partner-Letter-06-29-10.pdf
Milwaukee, Wisconsin: http://city.milwaukee.gov/ImageLibrary/Groups/ccCouncil/2010PDF/Solar_PACE_Manual.pdf
New York: http://www.dsireusa.org/incentives/incentive.cfm?Incentive_Code=NY68F&RE=1&EE=1
Sonoma, California: http://www.sonomacountyenergy.org/lower.php?url=faqs-75#3

seeking to participate in the City's Energy Independence Program. This ratio is defined as the value of the property at issue versus the sum of the lien for the energy upgrade and is set at 10:1.[13] This demonstrates that municipalities are capable of setting their own standards to protect mortgage holders in PACE programs.

Furthermore, as previously mentioned, the default rate for homeowners with PACE obligations is approximately 30 times lower than the national average. Since there is no demonstrable risk to mortgage holders, any federally-implemented conditions and restrictions would be above and beyond what is currently necessary.

However, if FHFA determines that national standards are necessary in order for PACE programs to move forward, the Department of Energy has already laid out guidelines that will reduce risk to all parties involved.[14] Again, GLELC restates these guidelines from our previous comment letter:

1) A requirement for expected Savings-to-Investment Ratio (SIR) greater than one, meaning that investments pay for themselves in energy savings over their useful lifetimes.
2) The term of the assessment should not exceed the useful life of the improvements.
3) The mortgage holder of record should receive notice when PACE liens are placed.
4) The PACE lien payment due should not be subject to acceleration upon property owner default.
5) The assessments should be appropriately sized, such that projects are greater than $2500, yet do not exceed 10% of the property's value.
6) Quality assurance and anti-fraud measures should be included, such as requiring licensed auditors and contractors to perform PACE work. Inspections should also be completed on at least a portion of participating properties upon project completion.
7) The total amount of PACE financing should be net of any expected direct cash rebates for energy efficiency or renewable energy improvements. At a minimum, programs should provide full disclosure to participants of the implications and options available with regard to income tax credits.
8) Programs should adequately educate applicants on how PACE financing works and alternative financing options.
9) For those PACE programs that seek third party investors, including investors in a municipal bond to fund the program, an assessment reserve fund should be created to protect investors from late payment or non-payment of PACE assessments.
10) Adequate data should be collected to assess the program's success, including: installed measures, investment amount, default and foreclosure data, expected savings, and actual energy use before and after measures installation. This may require agreements that the programs have access to the property's utility bills.

The DOE further outlined three assessment underwriting best practices guidelines. These include:

1) Programs should check to ensure the applicant has clear title to the property, including checking for any restrictions such as power of attorney, easements, or subordination agreements.

---

[13] *Energy Independence Report and Administrative Guidelines*, report available at: http://www.cityofpalmdesert.org/Index.aspx?page=484 (last visited July 7, 2012).

[14] *Guidelines for Pilot PACE Financing Programs*, May 7, 2010, available at: http://www1.eere.energy.gov/wip/pdfs/arra_guidelines_for_pilot_pace_programs.pdf (last visited July 11, 2012).

2) Programs should ensure estimated property value is in excess of property owner's public and private debt on the property to ensure that property owners have sufficient equity to support the PACE assessment.
3) Programs should ensure property owner's ability to pay by checking that owner is current on property taxes, has not been late more than once in the past three years, and has not filed for or declared bankruptcy for seven years.

These guidelines would address many of the concerns FHFA has regarding the perceived risks associated with PACE programs.

B. PACE Programs and the Market for Financing Energy-Related Home-Improvement Projects

1. *Subsequent Purchasers of Homes with PACE Project Installations will ask for a Reduction in the Purchase Price Proportional to the Outstanding PACE Obligation, thus Reducing Homeowners' Incentives to begin PACE-Financed Projects.*

As previously stated, energy retrofits increase property value.[15] Purchasers are willing to pay a premium for homes with energy upgrades because they typically lead to a reduction in annual utility costs. Since a subsequent purchaser will benefit from any energy upgrades made to the seller's home, it follows that the purchaser may be willing to pay for the benefits he will receive. FHFA's assumption that a subsequent purchaser will ask for a price offset proportional to the outstanding PACE obligation is merely speculative and not supported by available evidence. Studies on the topic to date suggest that buyers will pay a premium, rather than request a discount, for the benefits that energy retrofits provide over time.

Furthermore, a homeowner's incentive to install PACE-financed projects will not be reduced. As the NRDC study points out, the ability of a PACE lien to transfer to a subsequent purchaser is attractive to current owners because they need not bear the entire cost of an upgrade that will benefit a future owner of the home.[16] One of the most significant obstacles to widespread energy upgrades is the high upfront cost. By creating a system that spreads the cost of an upgrade over a number of years, current homeowners as well as subsequent purchasers will pay their share of the benefits provided by the energy upgrade. Therefore, current homeowners will not have to be concerned that their investment will benefit a future homeowner at no cost.

C. Public Policy Implications of PACE Programs

1. *Any environmental benefits and/or steps towards energy independence stem from the retrofits themselves, rather than from the method of financing. Furthermore, assertions of macroeconomic benefits as a result of PACE programs are irrelevant and/or not supported.*

One of the greatest barriers to widespread residential energy retrofitting is the upfront cost. PACE programs serve to reduce that upfront cost and encourage investment in energy upgrades. Energy upgrades help reduce the loads on power grids, which in turn reduces the need for output from facilities such as coal plants. And burning less coal improves air quality.

---

[15] See fn 3-4
[16] FHFA RIN 2590-AA53

PACE programs are tremendously popular. The program in Berkeley, California, for example, sold out within nine minutes.[17] In addition, PACE programs encourage investment in energy projects that would not otherwise occur. For example, the City of Berkeley, California interviewed participants in its PACE program and found that over 50% of them would not have installed solar panels without PACE financing. Those surveyed cited the ease of obtaining financing, reasonable interest rates, and benefits of transferability of the loan from one owner to another as reasons they favored the process.[18] There is, in fact, a direct connection between PACE programs and an increase in environmentally beneficial energy projects. It is inaccurate for FHFA to suggest that there is no such connection.

Furthermore, it is clear from a variety of studies that PACE programs have the potential to spur job creation and economic growth. In Boulder County, Colorado, for example, a PACE program was successfully implemented and the installation of PACE-financed projects spurred a net job gain of 85 jobs, and boosted economic output within Boulder County by $13.7 million over a one-year span.[19] Statewide, 126 jobs were created and economic output increased by $19.5 million during the same period.[20]

The PACE program in Sonoma County, California shows positive results as well. Since the program's inception in 2009, approximately 698 jobs have been created and $57 million have been pumped into the local economy. Moreover, 1,678 residential projects and 55 commercial projects have been funded.[21] Data on the existing PACE programs in the United States clearly demonstrate positive economic impacts.

D. Discussion of the Proposed Rule and Alternatives

It is the position of the GLELC that the proposed rule, as well as the alternatives suggested in the NPR, will have a substantial negative impact on PACE programs around the country and will reduce the number of energy retrofit projects. FHFA cites the "financial risks that first-lien PACE programs…cause the Enterprises to bear" as a reason to restrict such programs. However, as GLELC and other commenters have made clear through this process, the financial risks are minimal and the potential for positive economic and environmental impacts is high.

While alternative financing methods are available, they do not provide the benefits of PACE programs. PACE is unique because the obligation attaches to the property, rather than to the property owner. This financing is beneficial because while the average PACE project payback period is fifteen to twenty years,[22] homeowners sell and relocate every five to seven

---

[17] Frenkil, David John, *After the FHFA Fallout, What Happens Next with PACE Finance?*, Solar Industry, Volume 3, No 12, January 2011, available at: http://issuu.com/zackinpublications/docs/sim1101_online?mode=embed&layout=http://skin.issuu.com/v/light/layout.xml&showFlipBtn=true&pageNumber=38

[18] *Berkeley FIRST Initial Evaluation*, available at: http://www.ci.berkeley.ca.us/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Berkeley%20FIRST%20Initial%20%20Evaluation%20%20final%20(2).pdf

[19] Goldberg, Marshall et al., *Economic Impacts from the Boulder County, Colorado, ClimateSmart Loan Program: Using Property-Assessed Clean Energy Financing*, available at: http://pacenow.org/blog/wp-content/uploads/Econometric-Study-Boulder.pdf (last visited July 10, 2012).

[20] *Id.*

[21] *Sonoma County Energy Independence Program*, http://www.sonomacountyenergy.org/ (last visited July 7, 2012).

[22] Supra fn 7.

years on average.[23] Without PACE programs, home energy renovations would have to either be paid for up front, or be financed through a mortgage that attaches to the property owner. Homeowners are less likely to purchase energy upgrades if they have to bear the entire cost while a subsequent purchaser will enjoy the benefits. By creating a program where the lien attaches to the property, each owner will pay his share of the energy project.

There is no evidence that suggests that PACE programs present an increased risk to mortgage holders. All available data demonstrate a low risk and positive results. Households with PACE obligations have extremely low default rates and experience increased cash flow and utility cost savings. Municipalities experience benefits ranging from reduced loads on power grids to job creation to increased tax revenue. There is absolutely no evidence suggesting that FHFA needs to restrict PACE programs in order to decrease risk to parties involved.

E. Summary of PACE Program Benefits

Existing PACE programs have shown positive results, without exception. The benefits include low default rates, increased property values and cash flow, lower utility bills, decreased loads on power grids, less pollution, and an increased incentive for homeowners and business owners to install energy-efficient upgrades on their properties. The increased incentive stems from the reduction in upfront costs that PACE programs provide. Moreover, these costs are attached to the property so that an individual who installs an energy retrofit, but relocates before the end of its useful life, will not bear the entire cost of the upgrade. Without a program that can provide such benefits, widespread energy-efficient upgrades will not be possible.

It would be imprudent to restrict a program with such a positive track record and without significant risks. For the reasons stated in this letter, GLELC opposes FHFA's proposed rule and strongly supports the implementation of PACE programs throughout the United States.

Sincerely,

Kyle Peczynski
Student Attorney
Great Lakes Environmental Law Center
440 Burroughs St. Box 70
Detroit, MI 48202

[23] Lankarge, Nahorney, *The Evolution of Home Ownership*, HomeInsight, available at: http://www.homeinsight.com/details.asp?url_id=7&WT.cg_n=Publications&WT.cg_s=0&GCID=bhph1