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September 12, 2012

[Sent via Federal eRulemaking Portal: http://www.regulations.gov
and Email to FHFA at RegComments@fhfa.gov]

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Submitted by e-mail to: RegComments@fhfa.gov.

Re: RIN 2590-AA53, Notice of Proposed Rulemaking on Enterprise Underwriting Standards Relating to Mortgage Assets Affected by PACE Programs.

These comments are filed on behalf of the County of Sonoma and the Sonoma County Water Agency, in response to the Notice of Proposed Rulemaking of the Federal Housing Finance Agency ("FHFA") entitled "Enterprise Underwriting Standards," published June 15, 2012, in the *Federal Register*, regarding Property Assessed Clean Energy (PACE) programs.

As you are aware, the County of Sonoma ("County") operates one of the largest, most successful PACE programs in the country, the Sonoma County Energy Independence Program ("SCEIP" or "the Program"). The success of the County's Program is noteworthy, even though its momentum was considerably slowed by FHFA's July 6, 2010, Statement and actions by Fannie Mae and Freddie Mac. Over 1700 property owners have participated in the Program, completing over 1000 solar installations and 1600 energy efficiency projects. Solar installations have generated 7.9 megawatts of energy production, resulting in the annual removal of 4823 tons of carbon dioxide from the atmosphere. This is the equivalent of having removed over 850 cars from the road. In addition, this translates into the creation of over 700 jobs over the life of these projects (applying ARRA formulas).[1] Over 86% of the Program jobs have been completed by local contractors—providing critical support to a sector of the economy that has been decimated by the decline in the housing market.

[1] http://www.recovery.gov/About/Documents/Jobs_Report_Final.pdf, p. 5.

The data gathered by the County in the operation of the Program not only does not support FHFA's assumptions and fears, but demonstrates that the crucial assumptions underlying FHFA's resistance to PACE are wrong.

In addition to the data submitted by Sonoma County, FHFA must take note of the 30,000 comment letters in response to the Advance Notice of Proposed Rulemaking (ANPR) supporting PACE that were submitted by state and local governments, federal and state elected officials, banks, real estate developers, energy companies, and organizations representing millions of Americans. Those comments cited numerous studies, articles, legal decisions and other sources providing evidence that energy improvements increase the value of homes, reduce homeowners' energy costs and save homeowners money (thereby making mortgage repayment more likely); and that PACE programs produce jobs and economic activity, promote national security, and help local governments meet greenhouse gas reduction and clean energy goals. FHFA cannot ignore or brush aside this evidence establishing that PACE does not pose material risks to the Enterprises and choose to rely instead on assumptions and assertions that have no factual support. Federal law, by which FHFA is bound, requires the agency to "explain the *evidence* which is available, and . . . offer a 'rational connection between the *facts* found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43 (1983), quoting *Burlington Truck Lines v. United States,* 371 U.S. 156, 168 (1962) (emphasis added.). The proposed rule fails this test.

The Proposed Rule Intrudes on Local Government Authority to Impose Taxes or Assessments for Public Purposes.

FHFA's position--that it as a regulator of mortgage holders can now pick and choose those public purposes it will permit and those it will block--is unprecedented and a dangerous constitutional precedent. Local police powers, including assessment, taxation and spending for matters of health and welfare, are well recognized powers of local governments. Courts, including the United States Supreme Court, have recognized this power of local government for over a century. *See, e.g., Hagar v. Reclamation District No. 108*, 111 U.S. 701, 704 (1884): "It is not open to doubt that it is in the power of the State to require local improvements to be made which are essential to the health and prosperity of any community within its borders." (providing for the construction of canals and levees, to be paid for by assessments on benefitted property.)

Contrary to FHFA's assertions, PACE programs satisfy the essential criteria for local government assessment programs. Public funds are extended to complete projects addressing essential public health and safety issues. Those projects, like all other assessment projects, specifically benefit the property that is the subject of the assessment, by reducing utility costs for the property, and increasing the value of the property.[2] That is the essence of an assessment: public credit has been extended to complete a project, for a public purpose, specifically benefitting a particular property. *See Isaac v. City of Los Angeles*, 66 Cal.App.4th 586, 596 (1998): "[A] special assessment is . . a benefit to specific property that is financed through the public credit."

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[2] Numerous studies support the point that energy efficiency and renewable improvements increase the value of residential property. A few of these studies are referenced in footnotes 4 and 5, *infra,* and the text associated with those footnotes. Copies of those studies have been supplied to FHFA with other comments.

Assessments are established for numerous types of public projects. These include building and maintaining roads, street lighting, and landscaping; building and maintaining water delivery and sewer systems; and addressing seismic and geologic hazards. Necessarily, some of these projects require public ownership of the improvement, and require the participation of a neighborhood block to accomplish the purpose. Assessments related to sewer and road projects would be examples. Other public projects, such as energy and seismic upgrades, necessarily involve work on individual properties, and can be accomplished by work on non-contiguous properties. The essence of the project remains the same: a project to accomplish a public purpose, funded with public funds, and benefitting private property. That is a traditional assessment.

FHFA contends that PACE assessments are different because a property owner voluntarily joins the program and agrees to install the energy improvements. This is no different from many existing assessment statutes. Generally, initiation of assessment proceedings requires a petition by some percentage of affected property owners. (*See* Special or Local Assessments, 70C Am.Jur.2d § 119, p. 733 (2000)). Federal courts have upheld assessment liens as having priority against prior-in-time mortgage holders even where assessment proceedings were initiated upon the request of a single landowner/ developer. *See, e.g., Zipperer v. City of Fort Myers,* 41 F.3d 619, 625 (11th Cir. 1995); *Federal Deposit Insurance Corporation v. City of New Iberia,* 921 F.2d 610, 616 (5th Cir. 1991). There is no legal difference between those assessments and the contractual assessments at issue here.

As previously detailed in the County's comments on the ANOPR, located at http://www.fhfa.gov/webfiles/23639/216_Sonoma_County_Board_of_Supervisors.pdf, long prior to the adoption of AB 811 in 2008, California law recognized that some hazards cannot be addressed without the cooperation of private property owners.
Like adding improvements addressing climate change, each of these improvements provided special benefit to the privately-owned property, while also addressing a community issue. Property owner consent is required for each of these improvements, and the cost of the project is repaid through an assessment lien. Examples of these statutes include authorization for a Geologic Hazard Abatement District that may include projects on both public and private land, (Cal. Pub. Res. Code §§ 26532, 26650, and 26654.); the Improvement Act of 1911 which provides a remedy for abatement of geologic hazards on private property, (Cal. Str. & Hwy. Code §§ 5105, 5108.3.); authorization for work to bring privately owned buildings into compliance with seismic safety standards, (Cal. Str. & Hwy. Code § 10100.2.); and authorization for work deemed necessary to bring privately owned buildings into compliance with seismic safety standards, funded through a Mello-Roos special tax. (Cal. Gov. Code § 53313.5.)

Nor is California alone in instituting assessment programs where individual property owners can access public funds to improve their property for a public health or safety purpose, and repay the cost of the improvement through an assessment. Through the Massachusetts "Community Septic Management Program," the purpose of which is to prevent water pollution, property owners can voluntarily undertake upgrades to their septic systems and receive financing from the local government, and assessments, secured by a municipal lien, are placed on the participating

owners' parcels.[3] In addition, since 2001 in Hamburg Township, Michigan, property owners can apply to receive financing for the cost of connecting to the local sewer system by agreeing to participate in a "Contract Special Assessment District."[4]

Never before has a federal administrative agency taken the position it can decide which locally imposed assessments it will recognize and which it won't. We urge FHFA to acknowledge the governmental concerns of the 27 states that have adopted PACE laws, and work toward reaching a compromise on this important issue.

The Proposed Rule Does Not Preserve or Protect Enterprise Assets, and Fails to Recognize that Energy Improvements Add Value that Exceeds Cost.

The proposed rule consists of three parts: (1) directing the Enterprises to ready themselves to hold any property owner with a priority PACE lien in default on his or her mortgage, unless the Enterprises had consented to the lien; (2) directing that the Enterprises never purchase any mortgage subject to a priority PACE lien; and (3) directing the Enterprises never to consent to the imposition of a priority PACE lien.

The proposed rule not only does not "preserve and protect" the Enterprises' assets: if implemented as expected (i.e., by holding property owners that are actually paying their mortgages in default), the rule would result in waste of Enterprise assets. It is both nonsensical and unconscionable to default property owners who are paying their mortgages and paying their taxes and assessments for the sole purpose of challenging the power of local governments to impose assessments for purposes not deemed sufficiently important by FHFA.

In the case of Sonoma County, some $60 million in improvements have been added to participating properties. Pursuant to the Enterprises' standard security instruments, the mortgage holder claims those improvements as security for its own loan. Given the extremely low default rate on properties with SCEIP liens, the Enterprises are far better off and more secure as a result of the County's Program. As discussed *infra*, the current risk to the Enterprises of mortgage default is overwhelmingly generated by the Enterprises prior risky lending practices. Losses in the event of default are the result of drops in property value due to market fluctuations, and are not caused by the PACE lien. Risk to the Enterprises can be controlled by limiting access in PACE programs to property owners with some equity in their property, as would be required by Alternative 3.

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[3] Massachusetts Department of Environmental Protection, *Community Septic Management Program, available at:* http://www.mass.gov/dep/water/proman.pdf; *see also* http://www.mass.gov/dep/water/wastewater/onsite.htm#comm.

[4] Hamburg Township, Michigan, "Establishment of Contract Special Assessment Districts," *available at:* http://www.hamburg.mi.us/utilities/contract_sads_establishment_policies_and_procedures.htm; *see also* "Application to Participate in a Contract Special Assessment District Agreement for Single Building Unit Sewer Connection", *available at:* http://www.hamburg.mi.us/utilities/pdfs/02_application_to_participate_in_a_contract_SAD_agreement_for_single_building_unit_sewer_connection.pdf.

Also significant, contrary to FHFA's unfounded assumption, all of the evidence supports the conclusion that energy improvements *increase* the value of residential property. Numerous studies were cited by responders to the ANOPR supporting this fact.[5] Other recent studies continue to confirm this conclusion.[6] And, the Enterprises and HUD/FHA have recognized the value of these improvements in their Energy Efficiency Mortgage and Energy Improvement Mortgage programs.[7] There is simply no basis for FHFA to adopt its rule banning PACE programs and punishing PACE program participants, where all of the evidence demonstrates that the type of improvements added through PACE programs increase the value of Enterprise assets.

Enterprise Appraisal Practice and Requirements Actually Discourage Proper Valuation of Energy Improvements.

Since Fannie Mae and Freddie Mac own the great majority of mortgages in the country, it stands to reason that they also control the development of information about those properties. Indeed, the standard appraisal form used in valuing a residential property is the common form designed by Fannie Mae and Freddie Mac, available at: https://www.efanniemae.com/sf/formsdocs/forms/pdf/sellingtrans/1004.pdf. As recognized by the United States Department of Energy, however, the form fails to capture the cost of energy in evaluating property value, and provides no mechanism to value energy improvements:

[5] See, for example, studies referenced in comments filed by Vote Solar Initiative, and the joint comments of the Alliance to Save Energy and others: B. Bloom, M. C. Nobe, & M. D. Nobe. "Valuing Green Home Designs: A Study of ENERGY STAR Homes." *Journal of Sustainable Real Estate*. 3:1. 109-126. 2011. http://www.costar.com/uploadedFiles/JOSRE/JournalPdfs/06.109_126.pdf.; A. Amado. *Capitalization of Energy Efficient Features Into Home Values in the Austin, Texas Real Estate Market.* Massachusetts Institute of Technology. June 2007. http://dspace.mit.edu/bitstream/handle/1721.1/39848/182760581.pdf.; R. Nevin and G. Watson. "Evidence of Rational Market Valuations for Home Energy Efficiency." *The Appraisal Journal*. October 1998. http://mpra.ub.uni-muenchen.de/35343/1/Nevin-Watson_1998_APJ_Market_Value_of_Home_Energy_Efficiency.pdf; W. Pfleger, C. Perry, N. Hurst, and J. Tiller. *Market Impacts of ENERGY STAR Qualification for New Homes*. Appalachian State University. 2011. http://ncenergystar.org/sites/default/files/NCEEA_ENERGY_STAR_Market_Impact_Study.pdf.

[6] *See, e.g.,* Nils Kok Maastricht University, Netherlands / University of California, Berkeley, and Matthew E. Kahn, University of California, Los Angeles, *The Value of Green Labels in the California Housing Market / An Economic Analysis of the Impact of Green Labeling on the Sales Price of a Home* (July 2012), available at http://www.corporateengagement.com/files/publication/KK_Green_Homes_071912.pdf.; Ann Griffin, Earth Advantage Institute, with Ben Kaufman, GreenWorks Realty and Sterling Hamilton, Hamilton Investments, LLC, Certified Home Performance: *Assessing the Market Impacts of Third Party Certification on Residential Properties* (May 2009), available at
http://www.earthadvantage.org/assets/uploads/Final_report_from_web_from_greenresourcecouncil.org_site.pdf;
The Earth Advantage Institute (EAI), *Certified Homes Outperform Non-Certified Homes for Fourth Year* (June 8, 2011), available at http://www.earthadvantage.org/resources/library/research/certified-homes-outperform-noncertified-homes-for-fourth-year/;
North Carolina Energy Efficiency Alliance, *Market Impacts of ENERGY STAR® Qualification for New Homes* (2011), available at
http://ncenergystar.org/sites/ncenergystar.org/files/NCEEA_ENERGY_STAR_Market_Impact_Study.pdf

[7] These programs are described in the following web pages:
https://www.efanniemae.com/sf/mortgageproducts/pdf/eifeaturefacts.pdf;
http://www.resnet.us/professional/ratings/mortgages.

> Currently, financing for energy efficiency retrofits of existing homes is limited by the current methodology used for loan risk analysis. Customary underwriting is commonly summarized as an assessment of three factors: (1) the prospective borrower's creditworthiness (usually represented by borrower's credit history of paying other accounts on time); (2) an assessment of property value to confirm and assess resale value in the event of default; and (3) an assessment of the borrower's ability to make the mortgage payments on time—net income and assets that can be called on to make the monthly payments. Current underwriting and home appraisals do not consider certain costs of homeownership, specifically energy costs.
> . . Energy costs have risen steeply over the past 60 years and are expected to continue rising. [I]n light of this evolution of the energy and housing markets, the current methods for home appraisals are no longer sufficient to appropriately account for these significant changes. An underwriter uses the data presented in the appraisal report to determine optimal loan value. Typically, loan amounts are limited to the value stated in the appraisal report. Current appraisal reports do not account for energy costs of a house—an unavoidable cost of home ownership, and energy efficiency retrofit loans often receive limited financing as a result. (*The Role of Appraisals in Energy Efficiency Financing*, United States Department of Energy, p. 2-3 (May 2012); http://www.nrel.gov/docs/fy12osti/54329.pdf.)

The report emphasizes: ***"****The market cannot begin to account for energy costs as an element in a property valuation if energy efficiency measures are not recognized and recorded as a standard part of appraisal reports*.**"** (*Id,* p. 14.)(emphasis added.)

Thus Fannie Mae and Freddie Mac have created the situation they now use as a mechanism to undermine valuation of PACE projects: they insist on utilizing an appraisal form that does not recognize value for energy improvements.

Recently, the Appraisal Institute has developed a simple form to capture and record energy efficiency and renewable energy improvements. (available at: http://www.appraisalinstitute.org/education/downloads/ai_82003_reslgreenenergyeffaddendum.pdf.) We encourage FHFA to (1) direct that the Enterprises incorporate this or a similar form in all residential property appraisals so that the value added by energy improvements will be properly recognized and valued; and (2) recognize utility costs as a necessary component of home ownership, comparable to taxes and insurance, in evaluating potential purchasers.[8] PACE programs can further enhance this effort by maintaining records of installed improvements that could be made available to appraisers for use in completing residential property appraisals.

[8] A recent comparison of the Canadian vs. United States lending practices notes that heating is considered an ownership cost, and evaluated as such, in Canada. *See: Strategic Recommendations for an Optimal "PAPER" Program,* David Suzuki Foundation (2011), p. 27. This paper is available at: *http://www.sustainable-alternatives.ca/Strategic_recommendations_for_an_optimal_PAPER_program.pdf.*

Contrary to FHFA's Conclusions, Evidence Demonstrates that PACE Program Availability Results in More Energy Improvements.

In its analysis of submitted comments, FHFA states: "comments have failed to demonstrate that PACE programs would cause such a net increase in energy-efficiency retrofits." (p. 36106.) The County believes its previously submitted comments, available at http://www.fhfa.gov/webfiles/23639/216_Sonoma_County_Board_of_Supervisors.pdf, do in fact address this point. Pages 12-13 of these comments contain the following information:

"Data from Sonoma County projects supports the conclusion that the availability of the County's PACE program results in energy projects being completed that otherwise would not have been done. SCEIP has financed 7.7 megawatts of solar installations: 19 percent of the total installations in the County.[9] Given the economy and unavailability of home equity financing, or other type of financing to most property owners, in our view those projects would not have been completed without Sonoma's PACE program.

Below is a table listing a summary of solar energy improvements funded through Sonoma County's PACE program, and listing its effect on the environment:

Solar Summary - Improvements funded through SCEIP 3/25/2009 – 8/31/2012					
	Number of Systems	**Total Watts**	**Est. annual kWh production***	**Est. annual electricity savings***	**Est. annual carbon emissions saved* (tons)**
Residential	1017	5865039	8,562,956	$1,626,962	3,554
Commercial	44	2140600	3,125,276	$593,802	1,297
TOTAL	**1061**	**7727749**	**11,282,514**	**$2,220,764**	**4,851**

*Assumptions: (1) (kW array (STC rating) x 80%) x 5 hrs/day x 356 days/yr = annual kWh production.
(2) average electricity rate of $0.19 per kWh. (3) 0.83 lbs CO_2 per kWh.

Moreover, the greatest rate of solar installation in Sonoma County occurred in 2010, after SCEIP was established and before the FHFA interference with PACE programs. The National Renewable Energy Laboratory at its visualization website, located at http://openpv.nrel.gov/visualization/index.php, reports for Sonoma County that in 2009, there were 611 solar installations, in 2010, there were 1002 installations, but in 2011, installations dropped back to 737. The County believes the increase resulted from available PACE funding, and the decrease has resulted from the pall over the Program resulting from FHFA's position.

[9] California CSI website: http://www.californiasolarstatistics.org/reports/locale_stats/.

Mortgage Default Rates of Properties with PACE Assessments are Significantly Lower than Mortgage Default Rates Generally.

FHFA has indicated it would like to see data analysis addressing whether PACE programs create financial risk for the Enterprises. Because FHFA effectively halted the development of other PACE programs, Sonoma County is in the unique position of having several years of data related to PACE properties. The County partnered with the California Attorney General to provide a list of all of the PACE properties in the County, over 1500 residential properties, for analysis and comparison with other comparable properties. The report completed by Dr. Joseph Janczyk of Empire Economics, Inc., will be submitted by the California Attorney General under separate cover.

Using well established industry methodologies, Dr. Janczyk confirmed that from the pool of 1,536 residential properties participating in Sonoma's PACE program, only 13 were in default,[10] for a default rate of .085%. The default rate for residential properties in Sonoma County at the time was 2.19%. Dr. Janczyk explains that this difference is "highly significant." He concludes: "Therefore, based upon the empirical data along with the statistical analysis, the properties in SCEIP have a substantially lower Mortgage Default Rate than for Sonoma County, and this difference is statistically significant at the 99% + level."[11]

While it isn't possible to fully analyze why mortgage default rates among SCEIP participants are so significantly reduced compared to the population generally, one could hypothesize that the underwriting criteria employed by Sonoma County are effective in screening out risky candidates, or that having funds freed up by lower utility costs allows property owners to devote more funds to paying other expenses such as their mortgage.

Analysis of Data from Sonoma County Demonstrates that the Increased Tax Burden of a PACE Assessment Does Not Increase the Risk of Default.

FHFA speculates that "the homeowner's assumption of this new obligation may itself increase the risk that the homeowner will become delinquent or default on other financial obligations, including any mortgage obligations." (p. 36088.) Dr. Janczyk's second study, *Comprehensive Analysis of Economic and Financial Characteristics Underlying Mortgage Loan Defaults, Sonoma County Energy Independence Program (SCEIP)*,[12] contradicts this conclusion. Dr. Janczyk examined data from the five zip code areas in Sonoma County with the greatest concentration of SCEIP properties. His analysis confirmed that the higher tax burden created by the SCEIP assessment did not affect the mortgage default rate of properties. *Id,* p. 20.

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[10] Dr. Janczyk defines "default" to exist where (1) the borrower has missed one or more mortgage payments, and (2) the lender has filed a Notice of Default with the County Recorder. Empire Economics, *Economic Analysis of Mortgage Loan Default Rates, Sonoma County Energy Independence Program (SCEIP)* (June 28, 2012), p. 1.

[11] Empire Economics, *Economic Analysis of Mortgage Loan Default Rates, Sonoma County Energy Independence Program (SCEIP)* (June 28, 2012), p. 7.

[12] Empire Economics, *Comprehensive Analysis of Economic and Financial Characteristics Underlying Mortgage Loan Defaults, Sonoma County Energy Independence Program (SCEIP)*(August 24, 2012).

Evidence Demonstrates that the Greatest Risk of Default Comes From Risky Mortgage Loans, Not From PACE Assessments: Alternative 3, Implementing HR 2599 Underwriting Standards, Would Bar These Properties from Participating in PACE Programs.

In his second report, *Comprehensive Analysis of Economic and Financial Characteristics Underlying Mortgage Loan Defaults, Sonoma County Energy Independence Program (SCEIP)*, Dr. Janczyk examined what factors *do* cause mortgage defaults. Not surprisingly, Dr. Janczyk found "Mortgage Default Rates are strongly related to the LTV [loan to value] ratio at the time of the housing sale,"[13] and "Mortgage Default Rates are strongly related to the TIME of the housing sale." (i.e., properties purchased during the height of the housing market bubble were more likely to become defaulted.) *Id,* p. 20.

Dr. Janczyk's analysis demonstrated that an equity interest of 20 percent or above decreased the likelihood of a property owner defaulting on his or her mortgage. *Id,* p. 17.

The combined results of Dr. Janczyk's analysis strongly support adopting the HR 2599 criteria as FHFA's PACE rule. Dr. Janczyk found that PACE properties in Sonoma County have a significantly lower mortgage default rate than other properties, that the higher tax burden did not increase the incidence of default, and that properties where the owner held some equity interest in the property were less likely to go into default than other properties. Thus the combination of factors required by Alternative 3—eliminating property owners with a history of bankruptcy, eliminating property owners who have significant other liens on their property or do not pay their mortgage or taxes, limiting the size of a PACE project to 10 percent of the value of the property, and eliminating property owners with less than 15% equity in their property—will adequately protect the Enterprises, and may in fact *decrease* the likelihood of any mortgage default on existing properties. We therefore urge FHFA to consider adopting this alternative.

We do, however, have two areas of concern with ambiguities in Alternative 3 as proposed. Alternative 3 requires that the value of the property be established by a "current, qualified appraisal," in compliance with the Enterprises' published appraisal standards. It has been our experience that in most instances an automated valuation model (AVM) appraisal will provide a sufficiently accurate (indeed, usually a low) market value, at considerably less cost than a "boots on the ground" appraisal. Since an appraisal can cost several hundred dollars, which may be prohibitively expensive for many projects, we would suggest that unless there is specific concern that an AVM appraisal in inaccurate, FHFA clarify that AVM appraisals would be acceptable.[14]

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[13] The Canadian report referenced in footnote 4 further establishes the relationship between high loan to value ratios and mortgage defaults. As noted in that report, in Canada, where a property owner retains a larger equity interest in the property, the mortgage default rate in 2009 was .44%, compared to a default rate of 7% in the United States. *Strategic Recommendations for an Optimal "PAPER" Program,* David Suzuki Foundation (2011), p. 27.

[14] Fannie Mae recognizes that an AVM may be used to determine property valuation except for valuation decisions with respect to origination of a first mortgage. *See:* https://www.efanniemae.com/sf/guides/ssg/relatedsellinginfo/avms ./

Second, FHFA suggests (p. 36109) that the funded improvement must be the subject of an audit conducted by a certified Home Energy Rating System Raters or other similarly credentialed individual. Currently, Sonoma County insures that all projects are properly completed by requiring final inspection of the project by a local government building inspector before project funding can be approved. While the County encourages audits,
such audits are quite expensive, costing around $700. For small projects, this cost would be prohibitive. The County requests that FHFA consider alternatively utilizing published standards and estimates readily available on line from reputable sources, at least for low cost projects.[15]

No Product Exists as Described in Alternative 1.

FHFA's proposed Alternative 1, "Guarantee/Insurance," would allow PACE programs in jurisdictions where (1) repayment of the PACE obligation is irrevocably guaranteed by a qualified insurer upon any foreclosure; (2) insurance covers 100 percent of any "net loss" attributable to the PACE obligation; or (3) the PACE program has established a sufficient reserve fund to cover any net loss. There are several difficulties with this proposal.

First, FHFA does not suggest any mechanism to distinguish between net loss due to market conditions (decreased value of property) and any net loss that might actually be the result of the PACE lien. FHFA appears to assume that a buyer will not value the added improvements at all, but will account for the cost of the assessment in offering to purchase a bank-defaulted property. There is no evidence supporting this assumption, and no evidence that a PACE lien has affected the market value of any property sold because of a mortgage default.

Second, to the best of our knowledge, no insurance product for PACE improvement value exists at this time. If programs are permitted to develop and data becomes available, we are optimistic that a product which might differ from that proposed in Alternative 1 but would satisfy FHFA concerns could be developed. While we believe it is beneficial to keep the door open for this Alternative should a cost effective product be developed, it cannot be implemented at this time.

Alternative 2 Is Unnecessarily Restrictive and is Inconsistent with the Public Interest.

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[15] There are a number of tools currently and readily available that can be used to
calculate cost, savings, and useful life of improvements. These include, but are not limited to, the Solar Advantage Value Estimator created by the California Energy Commission (CEC) as part of its "Go Solar" program (Available at http://www.gosolarcalifornia.org/tools/save.php.); the PV Value™ Photovoltaic Energy Valuation Model recently developed by Sandia National Laboratory(Available at http://energy.sandia.gov/?page_id=8047. The website notes that "[f]or appraisers, the inputs specific to PV in the Residential Green and Energy Efficient Addendum can be used as inputs . . . .") in consultation with Solar Power Electric Power and the Appraisal Institute (*See* http://spefl.com/pvvalue.); the National Renewable Energy Laboratory's PVWatts™ calculator (Available at http://www.nrel.gov/rredc/pvwatts/); DOE's solar water heater calculator (Available at http://www.energysavers.gov/your_home/water_heating/index.cfm/mytopic=12910.); DOE's suite of Energy and Cost Savings Calculators for Energy-Efficient Products (Available at http://www1.eere.energy.gov/femp/technologies/eep_eccalculators.html.); and the Database for Energy Efficient Resources, developed by the CEC and the California Public Utilities Commission, which contains well-documented estimates of energy and peak demand savings values, measure costs, and effective useful life in one data source. (Available at: http://www.deeresources.com/.) In addition, we are certain that the Department of Energy, state agencies, and PACE program sponsors would be willing to work with FHFA to identify resources that would satisfy FHFA's concerns.

Alternative 2, the "Protective Standards" alternative, proposes restrictions far beyond anything reasonable to protect the Enterprises' assets. In addition to the very high FICO scores that would be required, FHFA proposes a "debt to income" ratio which includes payment of the PACE lien but appears not to consider utility costs (a failing of the current appraisal/underwriting criteria employed by the Enterprises); and a "loan to value" ratio, including the PACE lien but apparently excluding the value added by the improvements, of 65 percent.

Sonoma County has reviewed its data applying the loan to value ratio in this Alternative (45 percent equity requirement), and determined that of the 1,684 residential properties currently participating in SCEIP, only 461 would meet the loan to value criteria imposed in Alternative 2. This is a reduction in participation of 73 percent. Given that the current mortgage default rate of SCEIP properties is *less than one percent*, the restrictions proposed by Alternative 2 are grossly disproportionate, unnecessary, thwart the public interest described elsewhere in these comments, and in fact result in a net loss to Enterprise collateral by preventing over 70 percent of projects that would result in value added to properties with no risk of loss to the Enterprises.

FHFA must either modify its "consent" requirement or facilitate a method of obtaining consent from the Enterprises.

All three of the Alternatives provide that the Enterprises "would" consent to the PACE lien if the conditions of the Alternative are satisfied. The County objects to the concept that "consent" is required, and reiterates its position that FHFA regulatory authority does not extend to defining the public purposes for which taxes and assessments can be imposed. Notwithstanding this disagreement, the County would be willing to accept the criteria in Alternative 3 to eliminate the cloud on program participation presented by FHFA's current position. We urge FHFA in adopting a final rule to clarify how "consent" can be obtained. It has been our experience that servicing banks do not believe they have the authority to "consent" to a PACE lien. We would therefore recommend that consent be deemed to occur if a program is in compliance with the conditions of Alternative 3. The County would be willing to notify the servicing bank so that any escrow payments required could be properly adjusted.

FHFA's Efforts to Shut Down all PACE Programs Prevent Gathering the Very Data FHFA Claims It Needs to Validate the Value of PACE Programs.

Throughout the discussion of its proposed rule and response to comments already submitted in response to the ANOPR, FHFA cites lack of data from PACE programs as an impediment to developing a more rational, less restrictive rule.[16] This criticism is at best disingenuous. It is FHFA's own actions that have prevented the development of programs that would provide the data FHFA now claims proponents have failed to provide. FHFA's stated purpose in issuing its July 6, 2010 Statement was to "pause" the development of PACE programs, and it has succeeded

[16] See, e.g., p. 36104: "Comment letters reflected an absence of such information even three years after the promulgation of PACE statutes." "Such information" was defined to include "product descriptions, including safeguards, financing features, target markets, risk management procedures, prior experience in managing projects, test marketing or pilot programs, return on capital and profitability metrics and other details."

in that effort. Adopting an alternative such as Alternative 3/HR 2599 criteria that would allow programs to move forward will go a long way to assisting in the development of this helpful data.

FHFA's Mandate to Consider the Public Interest Requires that FHFA Develop a Rule that Accommodates PACE Programs while Reasonably Protecting the Enterprises' Interests.

FHFA cannot simply ignore the well-established evidence of the effect of the built environment on climate change, and the potential economic benefit to retrofitting houses. The U.S. Green Building Council reports that the building sector accounts for almost half of the greenhouse gas emissions in the United States annually.[17] The United States Environmental Protection Agency reports that this is spread approximately equally between residential buildings and commercial buildings.[18] The White House Recovery Through Retrofit report found that home energy retrofits have the potential of reducing home energy bills by $21 billion annually, paying for the retrofits over time.[19] A recent report by the Rockefeller Foundation estimated that $279 billion could be invested annually across the residential, commercial, and institutional market segments, yielding more than $1 trillion of energy savings over 10 years, and creating more than 3.3 million cumulative job years of employment.[20] Sonoma County SCEIP projects have generated more than 145,000 man-hours of construction work in our local job market. In short, energy retrofits have enormous potential not only to reduce greenhouse gas emissions and save energy, but also to benefit property owners through cost savings, and to create and sustain jobs. Given the lack of evidence that PACE liens result in any risk to the Enterprises, FHFA should adopt a more accommodating rule to encourage PACE retrofits in existing residential buildings.

In contrast, declining to adopt a rule accommodating PACE would appear to be a major federal action with significant impacts on the environment, requiring preparation of an Environmental Impact Report. Climate change will undoubtedly have very serious impacts on many properties with mortgages held by the Enterprises. Many expected impacts of climate change are detailed in the comment letter previously filed by the Environmental Defense Fund, http://www.fhfa.gov/webfiles/23725/293_Environmental_Defense_Fund.pdf.

We urge FHFA to consider these critically important public policy issues, and adopt a rule such as Alternative 3 to accommodate PACE programs.

FHFA Should Consider the Sonoma County Energy Independence Program to be a Pilot Program.

FHFA suggests at p. 36109 that it would appear productive to "deploy[] pilot programs tied to determining energy efficiency, providing metrics of such efficiency, training appraisers and

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[17] Announcement dated 5/7/2007, http://www.usgbc.org/News/PressReleaseDetails.aspx?ID=3124.

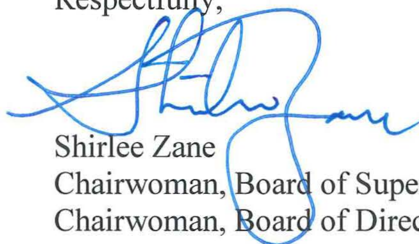
[18] http://www.epa.gov/ttnchie1/conference/ei17/session5/knowles.pdf.

[19] http://www.whitehouse.gov/assets/documents/Recovery_Through_Retrofit_Final_Report.pdf.

[20] http://www.rockefellerfoundation.org/uploads/files/791d15ac-90e1-4998-8932-5379bcd654c9-building.pdf.

inspectors, establishing standards based on such pilot programs in the area of energy efficiency and consumer protections and then providing a source of reliable information to consumers. ." Sonoma County already imposes most of the requirements set out in Alternative 3, with excellent results. Because the County declined to close its successful Program, we now have three years of data available, of the type sought by FHFA. With the assistance of the California Energy Commission, the County has produced a replication kit, to assist other jurisdictions in creating PACE programs with reduced initial cost. We repeat our offer to work with FHFA by providing data and allowing FHFA to assure itself that best practices will in fact adequately protect the Enterprises from risk if PACE is allowed to expand to other jurisdictions.

Respectfully,



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