Building
Performance
Institute, Inc.

September 13, 2012

VIA email: RegComments@fhfa.gov ; RIN 2590-AA53

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

RE: Building Performance Institute Comments on Notice of Proposed Rulemaking – Enterprise Underwriting Standards - RIN 2590-AA53

Dear Mr. Pollard:

The Building Performance Institute, Inc. (BPI) submits the following comments on the Federal Housing Finance Agency (FHFA) Notice of Proposed Rulemaking (NPR) RIN 2590-AA53 as it affects Property Assessed Clean Energy (PACE) programs. BPI objects to the premise of the NPR that the programs materially increase financial risks to Fannie Mae and Freddie Mac (the Enterprises), and to the Proposed Rule, which continues to block PACE. FHFA must issue a final rule based on facts, not assertions, and consider the environmental impacts of its actions and substantial public interest in PACE. As set out below, we propose an alternative that is consistent with the evidence and would allow PACE to proceed.

I. PACE Does Not Materially Increase Risks to the Enterprises

More than 30,000 comment letters in response to FHFA's Advance Notice of Proposed Rulemaking ("ANPR") supporting PACE were submitted by governments, elected officials, finance, real estate, and energy experts, organizations and concerned individuals, from around the country.[1] BPI hereby incorporates by reference the sources cited in those comments, which provide a substantial body of evidence that PACE increases the value of homes, reduces homeowners' energy costs (thereby making mortgage repayment more likely), grows jobs and economic activity, and helps local governments reach clean energy goals. In addition, BPI does not agree that FHFA's assertions in the NPR regarding perceived risk to the Enterprises resulting from local government PACE programs are founded in fact or science.

A. Performance Standards Protect the Investment of the Enterprises

BPI challenges the reasonableness of FHFA's basis for interfering with government commitments to PACE financing programs when the basis for interference is a lack of efficiency standards or the accuracy of energy savings calculations.

[1] [1] Comments submitted on the ANPR are available at: http://www.fhfa.gov/Default.aspx?Page=89&ListNumber=5&ListID=21591&ListYear=2012&SortBy=. As FHFA acknowledges, only a few of the more than 33,000 letters submitted in response to the ANRP expressed opposition to PACE. NPR, 77 Fed. Reg. at 36089.

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BPI is a recognized global leader supporting the development of a highly professional home performance industry through consensus standards development, individual and organizational credentialing, and a rigorous quality assurance program. BPI is accredited by the American National Standards Institute (ANSI) as a national Standards Development Organization supporting the residential energy efficiency retrofit community, and as a Personnel Certification Body verifying the competency of the individuals who apply those standards.[2]

BPI offers the following:

- certification of individuals in residential building energy auditing and analysis, mechanical, envelope and multifamily designations, developed in secured processes with Subject Matter Experts, based on applicable standards from across the industry;
- accreditation of organizations (contractor companies) committed to using a quality management system to deliver home performance services;
- quality assurance for accredited organizations to verify conformance with standards and provide feedback on best practices;
- affiliation of organizations capable of providing localized delivery of BPI certification exams; and
- national technical standards founded on sound building science principles developed in an open, transparent, consensus-based process.

BPI is 501(c)(3) private non-profit, founded in 1993. The national credentialing process and nationwide expansion of BPI is supported by the U.S. Department of Energy (DOE), U.S. Environmental Protection Agency (EPA), and U.S. Department of Housing and Urban Development (HUD). BPI's mission is to raise the bar in performance contracting. Reliable, highly skilled home performance contractors are in increasing demand, thanks to local efforts to increase the value of housing stock using a qualified local workforce to perform services that cannot be outsourced; meet climate change goals; and reduce energy consumption to achieve peak load management goals; and reduce dependence on imported fuels. Programs rely on BPI Standards and professional credentialing, because they know they will get quality work with a good return on investment. In fact, the Home Performance with ENERGY STAR® program BPI or equivalent for individual certification, company accreditation and program quality assurance protocols.

Home Performance is the systematic approach to improving the comfort, health, safety, energy efficiency and durability of customers' homes. BPI provides the professional credentialing and standards basis for programs nationwide, including 48 of the 52 Home Performance with ENERGY STAR programs, Energy Upgrade California, and others (Appendix A).

B. Well accepted and technically supported standards developed by BPI and other organizations that help ensure return on investments in home energy efficiency are available and are applied by programs that support PACE financing in the marketplace.

FHFA and the Enterprises can work to manage their risk by requiring properly qualified contractors who hold national credentials and follow nationally recognized performance standards.

BPI standards creating quality and consistency in residential energy efficiency have been adopted by more than a hundred programs that have expressed interest in PACE financing as a tool to support home energy efficiency efforts. Additionally, hundreds of state, local, utility and other non-governmental

[2] Building Performance Institute, "Approved Technical Standards," http://www.bpi.org/tools_downloads.aspx?selectedTypeID=1&selectedID=88, Accessed September 12, 2012. See also "BPI Standards Development Procedures," http://www.bpi.org/standards_development.aspx . Accessed September 12, 2012

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organizations in the US have adopted similar standards for reviewing and measuring consumer investment protection and energy savings. Any inconsistency in standards adopted by programs is not proof of their ineffectiveness or a lack of feasibility in using them, any more than variations in building codes from state to state prove that they are ineffective or irrational.

National laboratories, federal agencies and other research organizations have been advancing the accuracy and effectiveness of performance standards for home efficiency and for calculating efficiency gains since acceleration of interest in energy conservation in the 1970s. [3] In addition to the Department of Energy guidelines referenced in the FHFA NPR, research to support standards for the home efficiency industry from the Lawrence Berkeley Laboratory, Oak Ridge National Laboratory, the National Renewable Energy Laboratory, universities and respected private sector consulting firms including Advanced Energy, NAHB Research Center, IBACOS and Building Science Corporation is available and is in use by BPI, other standards organizations, and programs likely to offer PACE financing.

BPI has supported significant growth in credentialing for the home performance industry and weatherization assistance programs nationwide. More than 37,000 BPI certifications are active in the home performance marketplace as of the end of September 2012. More than 640 BPI Accredited Contracting Companies provide whole-house services and participate in the BPI Quality Assurance Program nationwide. More than 4,000 companies are accreditation ready across the nation, including those in the most populous areas of New York and California that already require BPI standards and certification for their investor-owned utility efficiency programs, as well as municipal and local government programs, as well as DOE Weatherization Assistance Programs in the majority of states. BPI is called out by a number of states who have adopted IECC 2012 Building Codes for verification and compliance purposes. Two BPI certifications are required by California for Title 24 compliance in certification of the highest level of Home Energy Rater under the Title 20 classifications.

Standards and procedures supporting home performance are developed for each certification designation offered by BPI using an open, transparent, credible, defensible process to ensure that the knowledge, skills and competencies, essential for earning the credential, are properly evaluated through a series of written and field exams.

Exam opportunities are provided by an expanding network of more than 240 BPI Test Centers nationwide. Every candidate must pass a 100-question online written exam and a 2-hour practical field exam delivered using a timed, secured, professionally proctored exam process.
Professional training organization across the country provide training in the theory of building science and home performance either on-line or in the classroom as well as field practical training.

BPI Professional Certifications are available in designations from highly technical diagnostic analysis to labor installation level to quality assurance inspector The BPI Certification designations that are trade related (i.e., Mechanical and Envelope series) are not intended to take the place of any available trade industry certifications or licensing that are typically focused on service and installation knowledge and skills. BPI Certifications are focused on candidates proving their ability to evaluate and to optimize the

[3] For examples of technical research continuing over decades see: Princeton University, “Residential Energy Conservation,” Library of Congress Catalogue Number 79-600103, available at http://www.princeton.edu/~ota/disk3/1979/7914/791401.PDF. July 1979. See also: National Renewable Energy Laboratory, “Whole-House Approach Benefits Builders, Buyers, and the Environment. Building Technologies Program Brochure,” at: http://nrelpubs.nrel.gov/Webtop/ws/nich/www/public/Record?rpp=25&upp=0&m=23&w=NATIVE%28%27KEYWORD2+ph+words+%27%27residential+energy+efficiency%27%27%27%29&order=native%28%27pubyear%2FDescend%27%29 . 2004. Includes a list of research organizations contributing to analysis of materials and retrofit standards. Accessed September 12, 2012.

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performance of improvements in installation and in the operation and service of building systems. BPI Certifications also ensure that the candidate understands the interaction of specific building systems with other building systems so that it does not create conditions that are harmful to life, limb or property. BPI professionals look at the house as a system, evaluate its performance, and provide comprehensive work scopes to provide solutions to the homeowner to address their needs and concerns that achieve verifiable results. With support from the U.S. Department of Energy (DOE) and National Renewable Energy Laboratory (NREL), BPI is currently piloting four new Home Energy Professional Certifications, including Energy Auditor, Installer, Crew Leader, and Quality Control Inspector.

Certified individuals must have a demonstrated ability to comply with certain ethics and communications requirements, including:

- present options for comprehensive conservation strategies that are consistent with sound building science practices,
- understand the implications of building performance improvements on occupants and other building systems/components,
- understand the implications of adding insulation without air sealing,
- understand the impact of installed actions on cost benefit analysis guidance,
- understand the non energy benefits of building performance improvements,
- effectively communicate with customer verbally,
- effectively document conditions and recommendations, and
- effectively communicate with customer in writing.

BPI Certified Professionals must submit continuing education units and must renew their certification every three years.

The BPI Quality Assurance Program provides nationwide quality assurance protocols and procedures for BPI Accredited Companies that reduce risk for homeowners and program sponsors or state or local jurisdictional code and licensing requirements. BPI provides periodic audits of project documentation, periodic on-site inspections of work, verification of equipment calibration, and requires customer dispute resolution protocols for each accredited company. BPI does not do quality assurance on individuals not affiliated with an accredited company.

II. Imperfection of underwriting standards is not a bar to underwriting loans; and the standards in use by the home efficiency industry, if not perfect, are sufficient for purposes of the FHFA.

FHFA cites uncertainties in calculating energy savings based on energy prices as a reason for lack of feasibility of creating acceptable underwriting standards and discount rates. To support that argument, FHFA cites studies – and, ironically, power point presentations – that seek to identify and analyze issues, and to improve the certainty of energy savings predictions, because these studies acknowledge that there is some uncertainty in energy savings predictions. However, acknowledgement of some uncertainty and opportunity for improvement does not prove that a useful conclusion has not been achieved. To the contrary, it is a reflection of the credibility of conclusions.

Although, as argued by FHFA, home efficiency savings predictions are not precise, they compare sufficiently to other tools in use by the home mortgage financing industry. Some analytical tools in use by the mortgage financing sector which yield precise mathematical predictions of outcomes have failed in a spectacular manner. Relatively subjective qualitative sources of underwriting information are also relied on for mortgage financing. These subjective tools include home value appraisals, which are conducted by individuals with arguably less training, professional certification and quality control than is required by most home performance programs. It is better for the consumer for predictions to be approximately correct than very precisely wrong.

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Borrower ability to pay, determined for individuals based on current credit ratings and employment confirmation, are imperfect measures of future ability to pay. In fact, the accuracy of predictions of energy prices over the recent 10 to 15 year time frame has been equal to or greater than the accuracy of predictions of local economies and personal employment over the same period of time. The established historical trend is that over the longer term, energy prices rise, and efficiency becomes more economically attractive. In addition, future changes in public policy related to security and environmental stability are not predictable, but historically have trended toward supporting the economic advantages of energy efficiency.

Tools for home appraisal and loan performance prediction based on actuarial data have become more sophisticated over time. While this sophistication has not perfectly protected investors, the tools available have been applied and continue to be applied – if more strictly today than in the past – to finance mortgage transactions.

A. Adequate tools for cost benefit analysis are also currently available.

One fact cited by FHFA as a reflection of lack of credibility of energy savings predictions is the failure of electric utilities to apply reasonable cost benefit calculations to energy savings. But these utility positions regarding cost benefit calculation issues are policies, not mathematical certainties. The policies reflect inertia and aversion to the costs of changing rate bases on the part of many utilities. They are not a reflection of lack of availability of reliable tools to develop adequate cost benefit calculations.

BPI has recently issued a standard (BPI 2400) for calibrating the calculations of energy savings models used to project the results achieved by home energy retrofits that reflects a consensus of more than 20 highly respected and experienced universities, national laboratories, software developers, programs and program implementers.[4]

B. BPI supports Alternative 3 of the FHFA NPR but only with substantial modifications.

Alternative 3 to the Proposed Rule (H.R. 2599 Underwriting Standards) provides a basis for ensuring that standards for protecting energy efficiency investments and resulting savings will be applied to PACE financing. Alternative 3 provides rigorous underwriting criteria and other protections to reduce the risk of default, ensure that PACE-financed improvements add to the value of homes and sufficiently protect the Enterprises from risk perceived by FHFA. But elements of Alternative 3 undermine its acceptability because they would effectively act as barriers to use of PACE financing.

III. FHFA should adopt a modified version of its Alternative 3.

As drafted in the NPR, Alternative 3 is not fully workable, because it still requires Enterprise consent to local government assessments for valid public purposes, and does not ensure that the Enterprises will indeed consent even if local governments comply with these rigorous underwriting standards. FHFA's Proposed Rule is grounded in its unsupported conclusion that PACE materially increases financial risk to the Enterprises because it is uncertain whether the value added by PACE-financed improvements

[4] Building Performance Institute, "BPI-2400-S-2011 Standardized Qualification of Whole House Energy Savings Estimates," http://www.bpi.org/tools_downloads.aspx?selectedTypeID=1&selectedID=88 . Accessed September 12, 2012.

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exceeds the total amount of the PACE assessment.[2][5] FHFA should therefore adopt a modified version of Alternative 3 as follows:

So long as all PACE liens are recorded and the Alternative 3 underwriting standards are satisfied, then the Enterprises shall:

- *not* take actions to make immediately due the full amount of any obligation secured by a mortgage that becomes subject to a first-lien PACE obligation;
- *be permitted* to purchase mortgages subject to first-lien PACE obligations; and
- if requested, *consent* to the imposition of a first-lien PACE obligation.

This variation on Alternative 3 provides a solution that is supported by the evidence, can be implemented by local governments right away and will allow PACE programs to move forward.

Thank you for your consideration of these recommendations. BPI is committed to a robust, national home performance program that supports both national and local objectives, while ensuring a viable contractor business model that provides persistent, sustainable results for the homeowner.

Respectfully submitted,

Building Performance Institute

By: /s/ Larry Zarker

Larry Zarker
Chief Executive Officer

[5]NPR, 77 Fed. Reg. at 36099-36100. FHFA's characterization of PACE as having a "lien-priming" attribute mischaracterizes the nature of PACE. As FHFA knows, PACE is an application of the longstanding, unquestionable state and local government authority to make assessments to finance improvements with a valid public purpose to legitimate government concerns regarding energy security, job creation and environmental protection. See Comments of Vote Solar Initiative on the ANPR (March 26, 2012) at 2-4, available at http://www.fhfa.gov/webfiles/23804/372_Vote_Solar_Initiative.pdf. Liens securing local government taxes and assessments have always held priority over private mortgages.

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