energy future COALITION

September 13, 2012

Mr. Alfred Pollard
General Counsel
Federal Housing Finance Agency
400 Seventh Street SW, Eighth Floor
Washington, DC 20024

Attn: Comments/RIN 2590-AA53

Dear Mr. Pollard:

Thank you for the opportunity to provide written comments on the Federal Housing Finance Agency's (FHFA) Notice of Proposed Rulemaking (NOPR) for Docket No. RIN 2590-AA53, Mortgage Assets Affected by Property Assessed Clean Energy (PACE) Programs. We are writing to oppose three main provisions of the proposed rule:

- That the government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac are prohibited from purchasing mortgages of properties with PACE assessments;
- That the GSEs can make mortgages with PACE assessments immediately due; and
- That the GSEs are prohibited from consenting to PACE assessments on mortgages that they own.

PACE financing has the potential to save U.S. homeowners and business owners billions of dollars, reduce greenhouse gas emissions, and create thousands of jobs while protecting mortgage holders from unnecessary risks, and thus it should be left up to municipal governments to decide whether to use PACE assessments to achieve public purposes, just as they do for other tax assessed projects like sewers, sidewalks, and streetlights.

The Energy Future Coalition (the Coalition) is a bipartisan, non-profit public policy group focused on identifying common-ground solutions to the energy problems facing the United States. Founded by former U.S. Senator Timothy E. Wirth, John Podesta, and former U.S. Ambassador C. Boyden Gray in 2001, the Coalition is led by a high-level bipartisan steering committee of energy experts. In 2009 we launched a campaign to increase energy efficiency upgrades to

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existing buildings, which account for 70% of all U.S. electricity consumption and 40% of U.S. greenhouse gas emissions. Called Rebuilding America, this campaign seeks to identify energy efficiency solutions that can scale up energy-saving upgrades to retrofit 40% of America's building stock – that's 50 million buildings – by 2020.[1] However, to meet this ambitious goal, building owners need access to low-cost financing mechanisms, since access to capital is the primary barrier to energy efficiency.[2] PACE has the potential to ameliorate this problem, but only if FHFA allows it to move ahead.

PACE is a scalable solution to the biggest barrier facing investments in energy efficiency – the up-front cost of installing energy-efficient technologies. Certain energy efficiency improvements can pay for themselves in a matter of months, but some deeper retrofits require a longer payback term, which necessitates the availability of low-cost financing. PACE assessments are a secure, low-cost tool that home and building owners can use to pay for needed energy improvements and should be encouraged, not blocked.

Municipalities commonly finance public purpose projects via tax assessments, including sidewalks, streetlights, and sewers. FHFA claims that PACE projects such as energy efficiency and clean energy generation do not fulfill valid public purposes that "add value to an entire community or special taxing district," but we at the Energy Future Coalition disagree.[3] Energy efficiency is the cheapest, cleanest form of energy, costing the equivalent of 1 to 3 cents per kilowatt-hour, and with the potential to save consumers billions of dollars annually on their energy bills.[4, 5] Upgrading the energy performance of 40% of America's buildings to reduce energy waste by 20% to 40% would reduce U.S. carbon dioxide emissions by 600 million to 1.2 billion metric tons, the equivalent of taking 48 million to 96 million cars off the road.[6] Finally, major energy efficiency improvements to America's building stock could create 625,000 sustained jobs over the next decade in in the construction sector, which has been plagued by above-average unemployment in recent years.[7] Saving consumers money, reducing greenhouse gas emissions, and creating jobs are valid public purposes, and thus PACE assessments should be allowed to operate just as other municipal tax assessments for sewers, schools, and sidewalks.

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[1] Bracken Hendricks and Reid Detchon, "Rebuilding America: A National Framework for Investment in Energy Efficiency Retrofits," (August 2009), p. 1-13. Available from http://www.energyfuturecoalition.org/files/webfmuploads/Efficiency%20Docs/Rebuilding%20America%20White%20Paper%20Final.pdf.

[2] Johnson Controls, "2010 Energy Efficiency Indicator Study," (April 19, 2010), p. 25. Available from http://www.institutebe.com/InstituteBE/media/Library/Resources/What's%20New/EEI-2010-North-America_Findings-Summary_2010Apr.pdf.

[3] *Federal Register*, "Federal Housing Finance Agency Enterprise Underwriting Standards Notice of Proposed Rulemaking; Request for Comments," (June 15, 2012), Vol. 77, No. 116, p. 36106. Available from http://www.fhfa.gov/webfiles/24014/77_FR_36086_6-15-12.pdf.

[4] Katherine Friedrich, Maggie Eldridge, Dan York, Patti Witte, and Marty Kushler, "Saving Energy Cost-Effectively: A National Review of the Cost of Energy Saved Through Utility-Sector Energy Efficiency Programs," (September 1, 2009). Available from http://www.aceee.org/research-report/u092.

[5] Bracken Hendricks and Reid Detchon, "Rebuilding America: A National Framework for Investment in Energy Efficiency Retrofits," (August 2009), p. 1-13. Available from http://www.energyfuturecoalition.org/files/webfmuploads/Efficiency%20Docs/Rebuilding%20America%20White%20Paper%20Final.pdf.

[6] Ibid., p. 13.

[7] Ibid., p. 2.

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As the conservator for the GSEs Fannie Mae and Freddie Mac, it is understandable that FHFA seeks to limit the risk that those entities are exposed to. However, by curtailing investments in energy efficiency, FHFA is counterproductively limiting homeowners' ability to pay for money-saving energy efficiency projects that can improve a homeowner's ability to repay a mortgage with the positive cash flow generated by a home energy use improvement. Limiting the GSEs' exposure to risky tax assessments can be limited by implementing the underwriting standards laid out by the U.S. Department of Energy in its May 7, 2010, "Guidelines for Pilot PACE Financing Programs" document.[8] The guidelines include many safeguards for mortgage holders, including but not limited to:

- Projects should have a savings-to-investment ratio of greater than one;
- Property value should be greater than outstanding debts attached to the property;
- Mortgage-holders should receive notice of PACE liens;
- PACE liens should not accelerate in the event of a property owner default;
- Projects should be limited to 10% of the property's estimated value;
- Contractors and inspectors should be properly certified and licensed; and
- PACE programs should incorporate a debt service reserve fund to protect investors.

The proposed rule states that, "Each participating property owner controls the use of the funds, selects the contractor who will perform the energy retrofit, owns the energy retrofit fixtures, and bears the cost of repairing the fixtures should they become inoperable," and therefore owners could potentially misuse PACE funds for non-energy-related expenditures, or for fixtures that are not permanently affixed to the property.[9] To address this concern, additional underwriting provisions could be crafted to condition PACE assessments on:

- Verification that all assessment funds are utilized for clean energy-related purposes;
- Advance approval of allowable PACE project investments;
- Confirmation from an accredited assessor that the PACE investments will have a defined payback period at current energy prices (e.g., 10 years or less); and
- Verification within a set timeframe (e.g., 3 years) of the investments that the project is meeting the expected energy performance criteria.

Of the PACE programs currently in effect, similar underwriting requirements have limited instances of PACE assessment defaults. Indeed, of the programs run by Babylon, New York; Boulder, Colorado; and Sonoma County, California, just 24 of 2,723 homes have defaulted on their PACE assessment – a rate of 0.88%, which can be compared to the national mortgage default rate of 5.49%.[10, 11] Because energy efficiency improvements save homeowners money,

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[8] U.S. Department of Energy, "Guidelines for Pilot PACE Financing Programs," (May 7, 2010). Available from http://www1.eere.energy.gov/wip/pdfs/arra_guidelines_for_pilot_pace_programs.pdf.

[9] *Federal Register*, "Federal Housing Finance Agency Enterprise Underwriting Standards Notice of Proposed Rulemaking; Request for Comments," (June 15, 2012), Vol. 77, No. 116, p. 36088. Available from http://www.fhfa.gov/webfiles/24014/77_FR_36086_6-15-12.pdf.

[10] David Gabrielson, "Letter to Mr. Alfred Pollard," PACE*Now*, (March 25, 2012), p. 9. Available from http://www.fhfa.gov/webfiles/23780/348_PACENow.pdf.

[11] Melodie Warner, "TransUnion: U.S. Mortgage, Credit-Card Delinquency Rates Decline in 2nd Quarter," *Wall Street Journal*, (August 14, 2012). Available from http://online.wsj.com/article/BT-CO-20120814-704579.html.

they are more able to repay mortgages – making it more, not less, likely that they will be able to repay mortgages held by Fannie Mae and Freddie Mac.

While it is impossible to know whether or not these defaults have had an impact on the GSEs, the simple fact that default rates on properties with PACE assessments were lower than the national average indicates that the owners of properties with PACE assessments are more, not less, able to repay mortgages held or guaranteed by Fannie Mae and Freddie Mac than are owners of non-PACE properties. The additional cash flow provided by properly underwritten energy efficiency or clean energy projects to building owners can be used to repay one's mortgage, making PACE a win-win proposition for building owners and the GSEs alike.

We therefore join the more than 30,000 PACE-supporting commenters from FHFA's Advance Notice of Proposed Rulemaking in calling for FHFA to modify its proposed rule to allow the GSEs to purchase mortgages with senior lien PACE assessments, prohibit the GSEs from making mortgages with PACE assessments immediately due, and consent to the addition of senior PACE liens on GSE-held mortgages.

With best wishes,

John Jimison
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