September 13, 2012

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

Dear Mr. Pollard:

As the national industry association representing America's home and building energy efficiency retrofit companies, Efficiency First objects to the premise of the Notice of Proposed Rulemaking (NPR) that Property Assessed Clean Energy (PACE) programs materially increase financial risks to Fannie Mae and Freddie Mac (the Enterprises), and to the Proposed Rulemaking, which continues to block PACE. Efficiency First urges Federal Housing Finance Agency (FHFA) to issue a final rule that considers the environmental and jobs 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.

About Efficiency First

Efficiency First (www.EfficiencyFirst.org) is a national nonprofit trade association comprised primarily of home and building performance contractors, insulation and HVAC contractors, and energy assessment companies focused on improving the energy efficiency and comfort of homes and buildings. The majority of our members are small businesses, employing less than 30 employees. In just over 2 years the organization has grown to over 600 members in 50 States, and over 20 chapters. Our core members are the contractors working on homes and buildings everyday. Through their membership in Efficiency First, these contractors are supported by committed and aligned market partners, including product and equipment manufacturers, suppliers and distributors, real estate professionals, and financing companies.

Efficiency First's mission is to be a voice for the home and building performance industry, and to advocate for policies that will create the foundation for a sustainable and scalable home retrofit market – one that protects the consumer and is contractor friendly. We seek to accomplish these goals by promoting a combination of aligned industry standards, and financing and performance-based incentives through collaborations with legislators, government agencies, utilities and professional organizations. We believe that a private-public market must exist where programs drive demand to an appropriately regulated private sector that will compete on efficiency and innovation in the free market. Efficiency First is focused on business development for the industry so that our members may prosper and grow profitably – while doing good and creating homeowner value and wealth along the way. If companies in this space are not profitable, then national and local legislative, policy, and regulatory goals around energy efficiency in existing homes and buildings will never be achieved.

FHFA Proposed Rule on PACE

When PACE programs began to come online and fund eligible energy efficiency retrofits, many home performance contractors reported a strong uptick in customer demand. Subsequently, when these programs were suspended, some companies were forced to layoff employees to account for lower consumer demand for PACE funded energy efficiency programs. PACE financing can play a key role in reducing the barriers customers face in funding an energy efficiency retrofit. Efficiency First has evidence that PACE is a job creating policy that needs to be reinstated.

Besides the environmental and jobs aspect, PACE programs allow State and local governments, that are no longer willing to wait for a comprehensive national energy efficiency home and building retrofit policy to emerge from Washington DC, to take the lead in promoting home-grown energy efficiency programs. PACE programs allow these governments to become vested in the success of their individually created programs, and this becomes a source of pride and self-reliance. These governments have shared with Efficiency First that they see the pre-emptive action by the federal government (FHFA) as intrusive and inhibiting their locally initiated jobs and energy programs.

More than 30,000 comment letters in response to FHFA's Advance Notice of Proposed Rulemaking (ANPR) supporting PACE were submitted by state and local governments, federal and state elected officials, banks, real estate developers and organizations representing millions of Americans – including from energy efficiency contractors all around the country. Those comments cited numerous studies, articles, legal decisions and other sources providing 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 meet greenhouse gas reduction and clean energy goals. FHFA must not ignore the substantial weight of the evidence in the record establishing that PACE does not pose material risks to the Enterprises.

PACE projects are also unique among the suite of home improvement projects – when customers purchase energy efficiency retrofits, they are paying for services that can significantly reduce ongoing energy costs, mitigating the financial impact of their loan repayment. Home performance contractors are specifically trained to advise their customers about the most cost-effective ways to retrofit and improve the energy systems in their home.

FHFA's Proposed Rulemaking is more harmful to local government PACE programs than the proposed action cited in the ANPR. In addition to prohibiting the Enterprises from buying mortgages on properties with PACE liens, it allows the Enterprises to make mortgages on such properties immediately due, and would prohibit the Enterprises from consenting to PACE obligations under any conditions. FHFA's Proposed Rule challenges the well-established authority of local governments to finance improvements with a valid public purpose through assessments, and imperils an extremely effective means of creating jobs, ensuring energy security and protecting public health and the environment.

Efficiency First agrees with the energy efficiency stakeholders who urge FHFA to adopt a modified version of its Alternative 3 to the Proposed Rule (H.R. 2599 Underwriting Standards). 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. 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 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:

1. *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;
2. *be permitted* to purchase mortgages subject to first-lien PACE obligations; and
3. *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.

Efficiency First also urges the FHFA, in its final rulemaking adopting this modified version of Alternative 3, to leave open the future opportunity to address its concerns through implementation of elements of its proposed Alternative 1 (Guarantee/Insurance). At this time, there is no insurance product in the marketplace or an established reserve fund that protects against "100% of any net loss" as suggested by FHFA, but some form of insurance or loan loss reserve could provide additional risk mitigation in the future. If an insurance product or reserve fund that provides sufficient protection against the risk to the Enterprises perceived by FHFA becomes available, local governments should be permitted to choose whether to utilize such products or comply with the Alternative 3 standards.

We welcome the opportunity to work with FHFA to further refine this modified alternative to the Proposed Rule if necessary. FHFA should not close to the door to residential PACE when a workable solution is either available now or can be resolved in a collaborative stakeholder process in a relatively short period of time.

To sum up, the contractors that have helped formulate and deploy these local PACE programs, and who have personally lived their success, wish that the federal government would either help or get out of their way to progress and profitable growth. As such, Efficiency First urges FHFA to adopt Alternative 3 to the Proposed Rule (modified as proposed in these comments), and leave the door open to the future use of insurance or reserve funds that could provide sufficient risk mitigation. This solution enables FHFA to enhance the value of the Enterprises' portfolio while respecting the rights of local governments to protect the public health and safety and allowing this extremely effective engine of job creation to move forward. Please to not hesitate to contact me at 202-680-8915 if you have any questions about these comments or the Efficiency First membership that supports them.

Sincerely,

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