September 13, 2012

Mr. Edward J. DeMarco
Acting Director
Federal Housing Finance Authority
400 7th Street, SW
Washington, D.C. 20024

Mr. Alfred M. Pollard
General Counsel
Federal Housing Finance Authority
400 7th Street, SW
Washington, D.C. 20024

Subject: Comments Regarding Proposed Rulemaking regarding Enterprise Underwriting Standards – Regulatory Information Number (RIN) 2590-AA53 from the Western Riverside Council of Governments

Dear Mr. DeMarco and Mr. Pollard:

The Western Riverside Council of Governments (WRCOG) is pleased to provide the Federal Housing Financing Authority (FHFA) with the following comments pertaining to the proposed rule to establish underwriting standards for the Federal Home Loan National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation ("Freddie Mac" and, together with Fannie Mae, the "Enterprises") relating to mortgage assets affected by Property Assessed Clean Energy ("PACE") programs (the "Enterprise Underwriting Standards"). Such proposed rule was set forth in the Notice of Proposed Rulemaking found in the Federal Register Vol. 77, No. 116.

About WRCOG

WRCOG is a joint exercise of powers agency established pursuant to a Joint Powers Agreement (the "JPA") among the County of Riverside (the "County") and certain cities located in the western part of the County, entered into in 1991, as amended to date pursuant to the Joint Exercise of Powers Act (California Government Code Section 6500). Currently, the member agencies of WRCOG include the County, 17 cities, two water districts, the March Joint Powers Authority, and the Riverside County Superintendent of Schools. Western Riverside County is a large geographical area located in Southern California, easterly of Orange County, southerly of San Bernardino County, northerly of San Diego County, and sharing its eastern boundary with the Coachella Valley Association of Governments (CVAG) in eastern Riverside County. WRCOG's service area encompasses approximately 2,100 square miles and a total combined population of over 1.7 million.

The purpose of the JPA is, in part, to provide an agency to conduct studies and projects designed to improve and coordinate common governmental responsibilities and services on an area-wide and regional basis by the establishment of an association of governments. The JPA provides that WRCOG will explore areas of inter-governmental cooperation and coordination of government programs and provide recommendations and solutions to problems of common and general concern. When authorized by an implementation agreement among member agencies, WRCOG is to manage and administer such programs.

The WRCOG PACE Program
In March 2010, the Executive Committee of WRCOG (the "Executive Committee") initiated proceedings pursuant Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code (Section 5898.10 and following) (the "Chapter 29") to establish a voluntary contractual assessment program to finance the installation of distributed generation renewable energy sources and energy efficiency improvements that are permanently fixed to residential, commercial, industrial, agricultural, or other real property (the "Authorized Improvements"). In June 2010, the Executive Committee, acting pursuant to Chapter 29, established the Energy Efficiency and Water Conservation Program for Western Riverside County (the "WRCOG PACE Program") to enable the financing of the installation of authorized improvements to be installed on residential and commercial properties. The County and 16 of the 17 cities within WRCOG have entered into implementation agreements with WRCOG to authorize WRCOG to establish, operate and manage the WRCOG PACE Program within their respective jurisdictions.

Pursuant to the WRCOG PACE Program, WRCOG is authorized to enter into voluntary contractual assessments by means of assessment contracts with property owners to finance the installation of authorized improvements on the properties of such property owners. The financing of the installation of such authorized improvements is funded by the issuance of municipal bonds pursuant to Chapter 29 and the Improvement Bond Act of 1915 (California Streets and Highways Code Section 8500 and following). Such bonds are secured by assessments levied against the properties of owners entering into assessment contracts. Such assessments are, in turn, secured by assessment liens recorded against such properties.

Following the establishment of the WRCOG PACE Program, WRCOG caused the initiation of judicial validation proceedings in the Superior Court of the County of Riverside in Case No. RIC 1103280 to validate among other matters the priority of the assessment liens on residential properties subject to assessments contracts entered into by the owners of such properties pursuant to the WRCOG PACE Program. In the judgment entered in such action, the Superior Court ruled that such liens, pursuant to California Government Code Section 53935, shall be prior and superior to all liens, claims and encumbrances except (a) the lien for general taxes or ad valorem assessments in the nature of and collected as taxes levied by the state or any county, city, special district or other local agency; (b) the lien of any special assessment or assessments, the lien date of which is prior in time to the lien date of the assessment for which the deed is issued; (c) easements constituting servitudes upon or burdens to said lands; (d) water rights, the record title to which is held separately from the title to said lands; and (e) restrictions of record.

WRCOG's Comments to the Enterprise Underwriting Standards.

The Proposed Rule. WRCOG is unequivocally opposed to the Proposed Rule. More than 30,000 comment letters in response to FHFA's Advance Notice of Proposed Rulemaking supporting PACE were submitted by state and local governments from around the country, federal and state elected officials, banks, real estate developers, energy companies, organizations and concerned individuals. The joint commenters referenced the numerous studies, articles, legal decisions and other sources cited in those comments providing a large 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. The Proposed Rule is neither reasonable nor necessary to limit the financial risks that first-lien PACE programs would allegedly cause the Enterprises to bear.

The First Risk-Mitigation Alternative – Guarantee / Insurance (the "Guarantee / Insurance Alternative"). WRCOG would not be opposed to the establishment of the First Risk-Mitigation Alternative, together with the Underwriting Alternative (defined below) as modified below, as a separate and alternative means of providing standards that would reasonably protect the Enterprises from the financial risks of first-lien PACE Programs. The insurance or guarantee would necessarily be required to be reasonably available and affordable in the marketplace.

Maintaining a reasonable cost to the consumer is a paramount concern of PACE Programs. An approach that builds a program reserve fund over time, or provides third party insurance at a low rate, would both be acceptable in WRCOG's view. Currently, WRCOG is not aware of any insurance agencies that have done a thorough analysis of PACE obligations to determine expected capacity for PACE insurance or pricing levels. To the extent that this alternative is selected, WRCOG would encourage the flexibility in being able to fund reserves or insurance at levels significantly lower than traditionally structured bond transactions.

The Second Risk Mitigation Alternative – Protective Standards (the "Protective Standards Alternative"). WRCOG is unequivocally opposed to the Protective Standards Alternative inasmuch as such alternative will, like the Proposed Rule, effectively extinguish PACE Programs for residential properties, including the WRCOG PACE Program.

The restrictiveness of this alternative effectively diminishes the probability of qualification to levels that would not be cost effective for program implementation teams to incur the cost of administering.

The Third Risk Mitigation Alternative – HR 2599 Underwriting Standards (the "HR 2599 Alternative"). WRCOG would accept establishment by FHFA of the HR 2599 Alternative, either as a stand alone alternative or as an alternative to the Guarantee / Insurance Alternative, if the HR 2599 Alternative is modified as follows:

<u>*Elimination of the requirement for an audit or feasibility study.*</u> WRCOG shares the same objective as the FHFA, which is the improvement in housing values in the community and the improvement in the borrower's ability to make their payment obligations. To this end, WRCOG's objective is to improve the adoption of energy efficient products in the community with property owners who have met underwriting requirements whereby they have equity in their homes and a track record as a good borrower.

There have been a number of case studies which have shown that in order for energy improvement programs to be effective, the process to replace a broken product must be simple. The U.S. Department of Energy provides for industry standard energy efficient standards across many different product lines. Property owners typically rely on these standards when making choices about which products they should purchase to replace a product which is underperforming or not performing in their homes. Programs which have required audit and feasibility studies have significantly reduced participation. Whereas, the housing industry and mortgage industry is looking to have the exact opposite effect, and that is the wide scale adoption of energy efficient measures.

The other recommendation WRCOG has is to slightly modify the requirement to have the total energy savings realized by the property owner and the property owner's successors during the useful life of the improvements to exceed the total cost to the property owner and the property owner's successors of the PACE assessment. WRCOG proposes that the rule be modified so that the energy savings of the eligible product are greater than incremental costs associated with selecting an energy efficient or water efficient model. This is the same analysis the U.S. Department of Energy provides in the calculators it offers consumers when determining the impact of energy efficient products. Most homes have roofs, windows, heaters, air conditioners and water heaters. All of these products must be replaced when they break. Thus, the question is not whether or not the property owner needs to replace an older product with an eligible product; rather the question the mortgage industry should be asking is what product should the property owner want to have placed on the home. PACE enables homeowners to finance products which lower the total operating costs of the property by financially rewarding homeowners to select products which increase their disposable income. If such an equation did not exist, property owners would not have any reason for selecting eligible equipment on their property. There are numerous sources of data which support this, including the U.S. Department of Energy's website.

WRCOG requests the FHFA to agree to participate in good faith efforts with stakeholders to address and eliminate the concerns that FHFA has regarding the perceived vagueness and / or lack of a sound basis for some of the assumptions upon which the HR 2599 Alternative are based, rather than rejecting this alternative out of hand for such reasons.

FHFA's Legal Authority to Establish the Enterprise Underwriting Standards.

The comments provided above are submitted in the spirit of compromise with the hope that FHFA can act in such spirit while reasonably fulfilling its responsibilities to the Enterprises and that the Enterprise Underwriting Standards can be revised to take into account the above comments so as to enable the housing sector to realize the continued success of PACE Programs, including the WRCOG PACE Program, to serve residential properties.

The comments provided above shall not constitute a concession by WRCOG that FHFA has the legal authority to establish the Enterprise Underwriting Standards or, in establishing the Enterprise Underwriting Standards, that FHFA has complied with applicable laws or regulations governing the establishment of such standards. Additionally, such comments do not constitute a waiver by WRCOG of any legal or equitable right that WRCOG may have to challenge the validity of the Enterprise Funding Standards.

FHFA should understand that the economic and environmental benefits of the WRCOG PACE Program as it applies to residential properties are of vital economic and environment importance to the citizens and property owners within the WRCOG subregion, which is an area that has suffered and continues to suffer significant economic loss as a result of the recent recession.

Thank you for your consideration and we look forward to working with you on this proposed rule. If you have any questions or need additional information, please contact me at (951) 955-8313, or by e-mail at spoonhour@wrcog.cog.ca.us.

Sincerely,

Barbara Spoonhour

Barbara Spoonhour
Director of Energy and Environmental Programs