March 2, 2012

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

Attention: Comments/RIN 2590-AA53

Dear Mr. Pollard:

On behalf of the nation's cities, towns, counties, and municipal governments, we appreciate the opportunity to provide comments to the Federal Housing Finance Agency (FHFA) on the Advance Notice of Proposed Rulemaking concerning mortgage assets affected by Property Assessed Clean Energy (PACE) programs. We urge FHFA to withdraw its July 6, 2010 Statement and February 28, 2011 Directive and allow the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), (together, the Enterprises), to purchase mortgage loans secured by properties with outstanding first-lien PACE and PACE-like obligations or by properties that could become subject to first-lien PACE obligations. Furthermore, we urge that these properties be secured on terms and conditions consistent with those applicable to mortgages secured by properties with no PACE assessments.

PACE programs operate in accordance with state law; twenty eight states plus the District of Columbia have passed laws enabling local governments to develop such programs. As such, locally-administered PACE programs are an exercise of the traditional authority of local governments to utilize the tax code for public benefit. We urge you to respect this authority, recognizing that the FHFA has no statutory authority to decide whether local government assessments are valid or not.

As you know, the health and vitality of local economies are critical for accelerating economic recovery. Despite budget shortfalls, state and local governments, in partnership with the federal government, are working to maintain and improve efficiencies in federal programs that support the services that citizens expect governments to deliver. A further challenge, however, is that traditional mechanisms for local finance and revenue, such as sales and property taxes and bond financing, remain difficult to access. As a result, local governments developed innovative financing programs, such as PACE, to help neighborhoods realize community and economic development goals even in challenging fiscal periods.

Unfortunately, rather than incent original solutions such as this, FHFA's July 6, 2010 Statement and February 28, 2011 Directive determining that energy retrofit lending programs, such as PACE, present significant safety and soundness concerns effectively closed an important avenue for financing improvements that would deliver financial and environmental benefits long into the future.

The 2009 report "Recovery Through Retrofit," issued with local and state input by the Administration's Middle Class Task Force and Council on Environmental Quality, suggests that energy retrofit lending programs, like PACE, are important for the national economic recovery agenda. Additionally, these programs are an achievement of the intergovernmental partnership to realize national policy goals, namely, reducing energy consumption, which will positively impact the fiscal conditions of every level of government.

In response to the specific concern about the hypothetical risk to the secondary mortgage market involved with PACE homes, as local leaders responsible for investing billions in public funds annually, we know well that risk is an inherent part of any investment. Like you, local governments constantly seek to minimize that risk; in our case, to the taxpayer. We believe the standards and best practices called for in the U.S. Department of Energy's "Guidelines for Pilot PACE Financing Programs" (Guidelines, May 7, 2010) are sufficient to minimize any potential risk posed by the PACE program to both the public and private investments in a PACE home. The Guidelines establish clear consumer protection and underwriting standards to protect homeowners and lenders, and we urge the FHFA to establish underwriting standards consistent with these Guidelines.

Furthermore, in April 2011, PACENow released a report on the "Economic Impact Analysis of Property Assessed Clean Energy Programs (PACE)" that found that PACE programs, done in a transparent way, have the potential to revitalize local economies, while helping homeowners. Moreover, the report found that "To the extent [that energy efficiency and renewable energy] projects reduce and/or stabilize households' energy budgets, [PACE] programs have the potential to be risk reducing, rather than risk enhancing, for mortgage lenders."

As you determine a path forward, we encourage you to recommit to working with local and state governments, and Congress and the Administration on a viable solution that will allow existing PACE programs to continue and encourage additional programs to flourish throughout the country.

Sincerely,

Larry E. Naake
Executive Director
National Association of Counties

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Executive Director
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Tom Cochran
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The United States Conference of Mayors