

The Great Lakes Environmental Law Center

*Protecting the world's greatest freshwater resource
and the communities that depend upon it*

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March 22, 2012

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

Via email to RegComments@fhfa.gov and submitted through Federal eRulemaking Portal

Re: RIN 2590-AA53

Dear Mr. Pollard,

These comments from the Great Lakes Environmental Law Center are in response to the Federal Housing Finance Agency's (FHFA) Advance Notice of Proposed Rulemaking (ANPR) concerning mortgage assets affected by Property Assessed Clean Energy (PACE) programs and Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA). These comments correspond to the questions raised in the ANPR and NOI.

A. Conditions and Restrictions Relating to PACE

Question 1:

- *Are conditions and restrictions relating to FHFA-regulated entities' dealings in mortgages on properties participating in PACE programs necessary?*
- *If so, what specific conditions and/or restrictions may be appropriate?*

Conditions and restrictions relating to FHFA-regulated entities' dealings in mortgages on properties participating in PACE programs are not necessary on a federal level because individual states and municipalities are best suited to address local concerns and market conditions. State and local PACE programs –such as those in Boulder, Colorado, Berkeley and Sonoma, California, Milwaukee, Wisconsin, or the state of New York– already employ

safeguards as localities and financial backers of PACE programs have incentives to minimize risk of foreclosure.¹

Even if federal level conditions and restrictions should be found necessary, the Department of Energy (DOE) has already outlined ten PACE program design best practice guidelines² in 2010 that minimize the risk to all parties. Many existing PACE programs adhere to these or similar requirements.³ The DOE guidelines include:

- 1) A requirement for expected Savings-to-Investment Ratio (SIR) greater than one, meaning that investments pay for themselves in energy savings over their useful lifetimes.
- 2) The term of the assessment should not exceed the useful life of the improvements.
- 3) The mortgage holder of record should receive notice when PACE liens are placed.
- 4) The PACE lien payment due should not be subject to acceleration upon property owner default.
- 5) The assessments should be appropriately sized, such that projects are greater than \$2500, yet do not exceed 10% of the property's value.
- 6) Quality assurance and anti-fraud measures should be included, such as requiring licensed auditors and contractors to perform PACE work. Inspections should also be completed on at least a portion of participating properties upon project completion.
- 7) The total amount of PACE financing should be net of any expected direct cash rebates for energy efficiency or renewable energy improvements. At a minimum, programs should provide full disclosure to participants of the implications and options available with regard to income tax credits.
- 8) Programs should adequately educate applicants on how PACE financing works and alternative financing options.
- 9) For those PACE programs that seek third party investors, including investors in a municipal bond to fund the program, an assessment reserve fund should be created to protect investors from late payment or non-payment of PACE assessments.
- 10) Adequate data should be collected to assess the program's success, including: installed measures, investment amount, default and foreclosure data, expected savings, and actual energy use before and after measures installation. This may require agreements that the programs have access to the property's utility bills.

The DOE further outlined three assessment underwriting best practices guidelines. These include:

¹ Berkeley, California: <http://www.cityofberkeley.info/ContentDisplay.aspx?id=27076>

Boulder, Colorado: Letter from Boulder County Board of County Commissioners, June 29, 2010, available <http://www.climatesmartloanprogram.com/pdf/CSLP-Partner-Letter-06-29-10.pdf>

Milwaukee, Wisconsin: http://city.milwaukee.gov/ImageLibrary/Groups/ccCouncil/2010PDF/Solar_PACE_Manual.pdf

New York: http://www.dsireusa.org/incentives/incentive.cfm?Incentive_Code=NY68F&RE=1&EE=1

Sonoma, California: <http://www.sonomaenergy.org/lower.php?url=faqs-75#3>

² *Guidelines for Pilot PACE Financing Programs*, May 7, 2010, available http://www1.eere.energy.gov/wip/pdfs/arra_guidelines_for_pilot_pace_programs.pdf

³ *supra*, fn 1

- 1) Programs should check to ensure the applicant has clear title to the property, including checking for any restrictions such as power of attorney, easements, or subordination agreements.
- 2) Programs should ensure estimated property value is in excess of property owner's public and private debt on the property to ensure that property owners have sufficient equity to support the PACE assessment.
- 3) Programs should ensure property owner's ability to pay by checking that owner is current on property taxes, has not been late more than once in the past three years, and has not filed for or declared bankruptcy for seven years.

B. Financial Risk to the Enterprises Resulting From Subordination of Mortgage Security Interests to PACE Liens

Question 2:

- *How does the lien-priming feature of first-lien PACE obligations affect the financial risks borne by holders of mortgages affected by PACE obligations or investors in mortgage-backed securities based on such mortgages?*
- *To the extent that the lien-priming feature of first-lien PACE obligations increases any financial risk borne by holders of mortgages affected by PACE obligations or investors in mortgage-backed securities based on such mortgages, how could such parties insulate themselves from such increased risk?*
- *at what cost could such parties insulate themselves from such increased risk?*

The lien-priming feature of first-lien PACE obligations lowers the financial risks borne by holders of mortgages affected by PACE obligations or investors in mortgage-backed securities based on such mortgages. Homeowners who participate in PACE programs have significantly lower mortgage default rates than other property owners in the same communities.⁴ PACE reduces Fannie Mae and Freddie Mac's exposure to risk and loss by encouraging private, market driven solutions for our nation's mortgage industry. Additionally, by reducing a homeowner's energy consumption, and thus the cost of remaining in the home in the face of rising energy costs, PACE financed projects make it easier for homeowners to pay mortgages.⁵ This energy cost savings aspect makes properties with PACE assessments even more secure than properties with other special tax assessments which FHFA does not oppose, since new sidewalks, parks, sewers, street lighting, etc. do not reduce an owner's operating costs. Furthermore, PACE programs are valid assessments comparable to these traditional special assessments, and not simply loans. Like traditional projects spawning special assessments, PACE projects benefit local communities, not solely the individual owners. Like new sewer pipes to reduce overflows, PACE energy efficiency upgrades lessen the load on electrical grids, likely reducing outages.

⁴ PACE 2 Page Summary, available: <http://pacenow.org/blog/wp-content/uploads/PACE-2-Pages-7-20-11a.pdf>

⁵ The National Resources Defense Council et al., *Property Assessed Clean Energy ("PACE") Programs White Paper*, Updated May 3, 2010, available: <http://pacenow.org/documents/PACE%20White%20Paper%20May%203%20update.pdf>

PACE programs insulate mortgage holders from financial risk by utilizing administrative checks on applicants similar to the DOE recommendations described above. These insulating measures can be implemented at low administrative costs and are relatively similar to requirements already in place for mortgage modification programs which FHFA should be familiar with, such as Home Affordable Modification Program (HAMP) or Home Affordable Refinance Program (HARP).⁶ Insulation from these administrative costs is ensured by the DOE requirement that projects meet a minimum cost threshold of approximately \$2500. Furthermore, traditional special tax assessments, such as those for sidewalks, parks, sewers, street lighting, etc., do not apply such insulating measures. Thus, properties with PACE assessments are even more secure than properties with traditional tax assessments which FHFA does not oppose.

Question 3: How does the lien-priming feature of first-lien PACE obligations affect any financial risk that is borne by holders of mortgages affected by PACE obligations or investors in mortgage-backed securities based on such mortgages and that relates to any of the following:

- *The total amount of debt secured by the subject property relative to the value of the subject property (i.e., Combined Loan to Value Ratio for the property or other measures of leverage);*
- *The amount of funds available to pay for energy-related home-improvement projects after the subtraction of administrative fees or any other program expenses charged or deducted before funds become available to pay for an actual PACE-funded project (FHFA understands such fees and expenses can consume up to 10% or more of the funds a borrower could be obligated to repay under some PACE programs);*
- *The timing and nature of advancements in energy-efficiency technology;*
- *The timing and nature of changes in potential homebuyers' preferences regarding particular kinds of energy-efficiency projects;*
- *The timing, direction, and magnitude of changes in energy prices;*
- *The timing, direction, and magnitude of changes of property values, including the possibility of downward adjustments in value?*

With regard to the total amount of debt secured by the property relative to its value, the financial risk with PACE assessments is no different than that of other special tax assessments used for over a century for projects such as street paving, parks, open space, water and sewer systems, street lighting, seismic strengthening, etc.⁷

⁶ Home Affordable Modification Program (HAMP) eligibility requirements available: <http://www.makinghomeaffordable.gov/programs/lower-payments/Pages/hamp.aspx>
Home Affordable Refinance Program (HARP) eligibility requirements available: <http://www.makinghomeaffordable.gov/programs/lower-rates/Pages/harp.aspx>

⁷ Ranchod, Sanjay, et. al., *The Constitutionality of Property Assessed Clean Energy (PACE) Programs Under Federal and California Law A White Paper*, available: [http://pacenow.org/documents/PHJW%20PACE%20White%20Paper%205.28.10%20\(final\).pdf](http://pacenow.org/documents/PHJW%20PACE%20White%20Paper%205.28.10%20(final).pdf)

FHFA's concerns about the amount of funds available for PACE project implementation after subtraction of administrative expenses is already accounted for by the safeguards discussed above, specifically the minimum project cost threshold. The safeguards and lien-priming aspects reduce risk to the backers of PACE programs, which frees more funds for such projects. This availability of more funds for energy efficiency projects lowers the risk to mortgage holders by allowing more homeowners to reduce their operating costs, thus decreasing their likelihood of default.

While energy efficiency technology is always improving, advances have already reached the point where SIR can be greater than one. With today's technology, homeowners can see a positive return on investment within a reasonable time from efficiency improvements. Typically this payback period ranges from ten to twenty years for residential projects.⁸ Additionally, many energy efficiency technologies advance very slowly. Improvements to insulation, furnaces, windows, etc. are unlikely to suddenly become out-dated technology within the life of the assessment.

The timing and nature of homebuyer's preferences reduces risk to mortgage holders. Many energy efficiency technologies implemented in PACE programs, such as new furnaces, insulation, and windows are not fixtures which are typically replaced based on buyer preferences. In fact buyers prefer homes with improvements to energy efficiency. "[A]ccording to the U.S. Department of Housing and Urban Development, home values rise an average of \$20 for every \$1 reduction in annual utility bills."⁹ An extensive study by the Ernest Orlando Lawrence Berkeley National Laboratory found that homebuyers are willing to pay an average premium of \$17,000 for properties with photo voltaic panels.¹⁰ Additionally, consumers are trending toward more environmentally friendly purchases even during the economic downturn.¹¹ Additionally studies show that energy efficient homes sell quicker.¹²

The timing and direction of changes in energy prices also lowers risk for mortgage holders of PACE properties. Energy prices are highly volatile, often influenced by extreme weather events or conflicts in oil producing regions of the world. Prices are expected to rise as reserves become scarcer and more difficult to access. Increased energy use by developing

⁸ *Energy & Simple Financial Payback Time For Photovoltaic Modules (Solar Panels)*, Tennessee Valley Authority, April 8, 2011, available at: http://www.tva.gov/greenpowerswitch/partners/pdf/solar_payback_summary.pdf

⁹ Pandolfi, Keith, *Boost Home Value, Get Cheaper Bills*, CNN Living, March 04, 2008, available at: http://articles.cnn.com/2008-03-04/living/solar.power_1_solar-energy-devices-rebate-program-solar-panel/2?_s=PM:LIVING

¹⁰ Hoen, Ben et. al., *An Analysis of the Effects of Residential Photovoltaic Energy Systems on Home Sales Prices in California*, Ernest Orlando Lawrence Berkeley National Laboratory, April 2011, report summary available: <http://eetd.lbl.gov/ea/emp/reports/lbnl-4476e-rs.pdf>

full report available: <http://eetd.lbl.gov/ea/emp/reports/lbnl-4476e.pdf>

¹¹ *2009 Cone Consumer Environmental Survey*, Cone Communications, 2009, available at: http://www.coneinc.com/stuff/contentmgr/files/0/56cf70324c53123abf75a14084bc0b5e/files/2009_cone_consumer_environmental_survey_release_and_fact_sheet.pdf

¹² DeVries, Cisco, et. al., *How Cool: Changes to Municipal Finance Law Address Global Warming, Create Green Jobs and Promote Energy Independence*, Bloomberg Law Reports, 2010, available: <http://pacenow.org/documents/Bloomberg%20Law%20Article.pdf>

nations puts further upward pressure on future energy prices. PACE programs mean lower energy bills which in turn provide a boost to household budgets and lowers the chance of mortgage default.

Question 4: To the extent that the lien-priming feature of first-lien PACE obligations increases any financial risk that is borne by holders of mortgages affected by PACE obligations or investors in mortgage-backed securities based on such mortgages and that relates to any of the following, how and at what cost could such parties insulate themselves from that increase in risk:

- *The total amount of debt secured by the subject property relative to the value of the subject property (i.e., Combined Loan to Value Ratio for the property or other measures of leverage);*
- *The amount of funds available to pay for energy-related home-improvement projects after the subtraction of administrative fees or any other programs expenses charged deducted before funds become available to pay for an actual PACE funded project (FHFA understands such fees and expenses can consume up to 10% or more of the funds a borrower could be obligated to repay under some PACE programs);*
- *The timing and nature of advancements in energy-efficiency technology;*
- *The timing and nature of changes in potential homebuyer preferences regarding particular kinds of energy-efficiency projects;*
- *The timing, direction, and magnitude of changes in energy prices;*
- *The timing, direction, and magnitude of changes of property values, including the possibility of downward adjustments in value?*

While the total amount of debt secured by the subject property relative to the property's value increases with PACE assessments, mortgage holders can be insulated from risk by following the DOE guidelines. Specifically, the estimated property value should be in excess of the property owner's public and private debt on the property. The PACE assessments should also not exceed 10% of a property's value. These insulating measures can be implemented with minimal administrative costs.

As stated above, mortgage holders can be insulated from concerns about administrative costs by requiring that projects be of appropriate scope. Generally, projects should cost more than \$2500, and the total amount of PACE financing should be net of any expected direct cash rebates. Such a scope check requires minimal administrative costs.

Mortgage holders are insulated from risk related to advancements in technology by requiring the SIR to be greater than one using existing technology. Minimal administrative costs can accomplish the SIR analysis.

As discussed above, buyer preferences and changes in energy prices do not significantly increase risk of PACE programs and in most cases decrease the risk. Likewise, energy efficient

properties are more attractive and their values actually increase.¹³ With an SIR greater than one, even if a buyer decreases an offer by an outstanding PACE obligation, the increase in value due to efficiency still yields a net increase in value.

Additionally, mortgage holders are insulated from risk by the inclusion of loan loss reserve funds (LLRF). LLRFs are escrow accounts used to provide partial protection from owner defaults by covering a percentage of the missed payment.¹⁴ The LLRF money can come from public funds or a variety of sources including contractor licensing fees.¹⁵ Many PACE programs utilize or plan to implement such reserves, making them even more secure than traditional assessment districts which typically do not have reserve funds.¹⁶

C. PACE and the Market for Home-Improvement Financing

Question 5:

- *What alternatives to first-lien PACE loans (e.g., self-financing, bank financing, leasing, contractor financing, utility company “on-bill” financing, grants, and other government benefits) are available for financing home-improvement projects relating to energy efficiency?*
- *On what terms?*
- *Which do and which do not share the lien-priming feature of first-lien PACE obligations?*
- *What are the relative advantages and disadvantages of each, from the perspective of*
 - (i) The current and any future homeowner-borrower;*
 - (ii) the holder of an interest in any mortgage on the subject property, and*
 - (iii) the environment?*

While alternative methods for financing energy efficiency projects exist, they each have drawbacks. On average, homeowners sell and move every five to seven years¹⁷, whereas the average payback period for PACE projects is fifteen to twenty years.¹⁸ Thus, homeowners are

¹³ Hoen, Ben et. al., supra fn 10
see also: supra fn 11 and fn 12

¹⁴ Warren, Nathan, *A Glossary of Energy Efficiency Financing Tools*, ECONOMIC OPPORTUNITY STUDIES, July 2011, available: <http://www.opportunitystudies.org/wp-content/uploads/2011/11/Glossary.pdf>

¹⁵ supra, fn 14

¹⁶ State of California: http://www.treasurer.ca.gov/caeatfa/abx1_14/workshops/20110830/framework.pdf
Berkeley, California: http://www.ci.berkeley.ca.us/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Guide%20to%20Renewable%20Energy%20Financing%20Districts2009.pdf
Milwaukee, Wisconsin: http://city.milwaukee.gov/ImageLibrary/Groups/ccCouncil/2010PDF/Solar_PACE_Manual.pdf
State of Vermont: VT ST T. 24 § 3270

¹⁷ Lankarge, Nahorney, *The Evolution of Home Ownership*, HomeInsight, available: http://www.homeinsight.com/details.asp?url_id=7&WT.cg_n=Publications&WT.cg_s=0&GCID=bhph1

¹⁸ supra fn 5

reluctant or incapable of self-financing such projects, as up-front costs are their main hurdle.¹⁹ Current owners who self-finance are stuck with the costs if they sell the house. They are more at risk of foreclosure since there are no built-in safeguards to prevent over spending. Self-financing thus increases risk that mortgage holders may end up with more foreclosures.

Bank financing can be difficult to come by as private companies must bear the high initial costs and risk of the owner's default on payments. Additionally, home equity loans are "due on sale," meaning the owner must pay off the loan before experiencing the project's full economic benefit.²⁰ The owner may be reluctant to use this option, as he/she will be liable for the remainder of the loan despite not reaping the benefits, should he/she sell the property.

Equipment leasing programs are simply not applicable to many PACE projects. A homeowner cannot return insulation, furnaces, windows, etc. at the end of a term. Leasing programs are also dependent on participation of companies. Owners also have less incentive to stay in the home, since the long term benefits of leased projects is lower, a result of never paying off the addition.

Contractor financing is also dependent on contractors' participation. Contractors may be reluctant as they would bear the high initial costs and risk of default. Owners are again reluctant since the obligation to pay for benefits no longer enjoyed continues after sale of the property. Future owners may be uncertain if contractors hold a lien on fixtures.

Utility company on-bill financing locks owners in at a certain energy price until the loan is paid off. This arrangement does nothing to lower property operation costs, thus placing owners at risk of being less able to make mortgage payments and in turn places mortgage holders at risk for more foreclosures.

Grants offer no return on investment for the grantor, typically taxpayers through the government.

Likewise, tax credits are unlikely to cover the cost of the project and the homeowner still must find other means for paying the high upfront costs.

Relying on these alternatives to PACE funding and their respective disadvantages will result in less implementation of energy efficiency projects and continued increases in housing-sector energy use. Increased energy use is met by increased fossil fuel energy production, which results in increased environmental degradation, especially to air and water quality.

Question 6:

- *How does the effect on the value of the underlying property of an energy-related home-improvement project financed through a first-lien PACE program compare to the effect on the value of the underlying property that would flow from the same project if financed in any other manner?*

¹⁹ Middle Class Task Force Council on Environmental Quality, *Recovery Through Retrofit*, October 2009, available: http://www.whitehouse.gov/assets/documents/Recovery_Through_Retrofit_Final_Report.pdf

²⁰ supra fn 5

As discussed, energy efficiency improvements increase property values regardless of first lien status. However, homes with first lien PACE financing may be more desirable to potential buyers than those with the same project financed by other means. With first-lien tax assessments, the purchase price of the home may be lower, since the cost of the improvements is factored into taxes for the remainder of the obligation. With other financing means, the cost of the project increases the purchase price, to allow the original owner to recoup his/her ongoing obligations or upfront costs. Buyers are more adverse to increases in immediate, obvious costs than to long term, latent costs such as taxes.²¹

Question 7:

- *How does the effect on the environment of an energy-related home-improvement project financed through a first-lien PACE program compare to the effect on the environment that would flow from the same project if financed in any other manner?*

More energy efficient projects are likely to be implemented as a result of allowing first lien PACE programs. Allowing first lien programs will result in more positive effects on the environment. This increased implementation is evidenced by the high demand for existing PACE funding. Berkeley, California's program sold out within nine minutes and Boulder, Colorado sold over \$10 million in bonds for its PACE program.²² These programs have essentially been put on hold as a result of FHFA's decision.²³

Question 8:

- *Do first-lien PACE programs cause the completion of energy-related home improvement projects that would not otherwise have been completed, as opposed to changing the method of financing for projects that would have been completed anyway?*
- *What, if any, objective evidence exists on this point?*

First lien PACE programs enable the installation of energy-related home improvement projects that would not otherwise have been completed. The City of Berkeley surveyed applicants and participants as part of its PACE program, called "B1". "Over 50% of the Participants would have not installed solar without B1 financing, and none of the Applicants would have installed solar without prior exposure to the B1 program." Additionally, the "[m]ain reasons that motivated Participants to choose B1 over other financing options for solar installation were: Ease of obtaining financing, attraction of participating in a pilot program,

²¹ Welch, Ned, *A marketer's guide to behavioral economics*, McKinsey Quarterly, February 2010, McKinsey & Company, available: http://www.mckinseyquarterly.com/A_marketers_guide_to_behavioral_economics_2536

²² Frenkil, David John, *After the FHFA Fallout, What Happens Next with PACE Finance?*, Solar Industry, Volume 3, No. 12, January 2011. available: http://issuu.com/zackinpublications/docs/sim1101_online?mode=embed&layout=http://skin.issuu.com/v/light/layout.xml&showFlipBtn=true&pageNumber=38

²³ Dodge, Jefferson, *ClimateStupid? Why an innovative energy program was killed — and what's being done to revive it*, Boulder Weekly, April 7, 2011, available: <http://www.boulderweekly.com/article-4887-climatestupid.html> see also: <http://www.cityofberkeley.info/berkeleyfirst/>

reasonable interest rate, benefits of transferability of loan to new owner of house & simple application process”²⁴ Since the FHFA letter regarding PACE properties, many PACE programs have been suspended.²⁵

D. PACE and Protections for the Homeowner-Borrower

Question 9:

- *What consumer protections and disclosures do first-lien PACE programs mandate for participating homeowners?*
- *When and how were those protections put into place?*
- *How, if at all, do the consumer protections and disclosures that local first-lien PACE programs provide to participating homeowners differ from the consumer protections and disclosures that non-PACE providers of home-improvement financing provide to borrowers?*
- *What consumer protection enforcement mechanisms do first-lien PACE programs have?*

Many PACE programs include consumer protections and disclosures for the protection of participating homeowners. These are similar to the DOE recommendations discussed above. In particular, PACE liens should not be accelerated upon property owner default. Then there are checks to ensure assessments are appropriately sized, typically greater than \$2500 but not exceeding 10% of a property’s estimated value. Additionally, consumers are protected from fraudulent contractor work by ensuring only validly licensed auditors and contractors perform PACE work, and requiring inspections on a portion of participating properties. In Miami and Sacramento specifically, the private capital company Ygrene Energy Fund manages the retrofit programs. Since its business is on the line, Ygrene promises close scrutiny of contractors.²⁶ In Berkeley, contractors for its PACE program must be registered solar installers in the state.²⁷

These consumer protections are more thorough than non-PACE alternatives. In other financing methods, protections and checks are left to individual owners or intermediary companies which lack the expertise needed for adequate protection. PACE programs allow for enforcement mechanisms such as inspections and license revocation.

²⁴ Berkeley FIRST Initial Evaluation, available: [http://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Berkeley%20FIRST%20Initial%20%20Evaluation%20%20final%20\(2\).pdf](http://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Berkeley%20FIRST%20Initial%20%20Evaluation%20%20final%20(2).pdf)

²⁵ ECONorthwest, *Economic Impact Analysis of Property Assessed Clean Energy Programs (PACE)*, April 2011, available: <http://pacenow.org/blog/wp-content/uploads/PACE-Econometric-Study-by-ECONorthwest-for-PACENow-5-4-11.pdf>

see also: Letter from Boulder County Board of County Commissioners, June 29, 2010, available <http://www.climatesmartloanprogram.com/pdf/CSLP-Partner-Letter-06-29-10.pdf>
see also: supra fn 23

²⁶ Gillis, Justin, *Tax Plan to Turn Old Buildings ‘Green’ Finds Favor*, The New York Times, September 19, 2011, available: http://www.nytimes.com/2011/09/20/business/energy-environment/tax-plan-to-turn-old-buildings-green-finds-favor.html?_r=1&scp=8&sq=PACE&st=cse

²⁷ Berkeley First FAQs, available: <http://www.cityofberkeley.info/ContentDisplay.aspx?id=27076>

Question 10:

- *What, if any, protections or disclosures do first-lien PACE programs provide to homeowner-borrowers concerning the possibility that a PACE-financed project will cause the value of their home, net of the PACE obligation, to decline?*

Concerns that a PACE financed project will cause values to decline are unfounded. Despite less direct and individualized benefits than PACE projects, even the property values of homes with traditional property assessments increase. This is the underlying point of such assessments; the “core of the definition of a special assessment” is that it “is used to provide ... improvements that are intended and designed to benefit particular properties and demonstrably enhance the value and/or the use or function of the properties that are subject to the special assessment.”²⁸ As discussed above, property values increase with energy efficiency upgrades and purchasers are willing to pay premiums for such properties.²⁹ Berkeley’s participant survey even found that “67% of the Applicants believed that resale value would increase, while 33% believed there would be no change.”³⁰

Question 11:

- *What, if any, protections or disclosures do first-lien PACE programs provide to homeowner-borrowers concerning the possibility that the utility-cost savings resulting from a PACE-financed project will be less than the cost of servicing the PACE obligation?*

Concerns regarding the possibility that the utility-cost savings resulting from a PACE financed project will be less than the cost of servicing the PACE obligation are unfounded so long as the PACE program requires an expected SIR greater than one and that the term of the assessment should not exceed the useful life of the improvements, as recommended by the DOE and implemented by many PACE programs. This check is accomplished by well established utility analyses.

Question 13:

- *What, if any, protections or disclosures do first-lien PACE programs provide to homeowner-borrowers concerning the possibility that subsequent purchasers of the subject property will reduce the amount they would pay to purchase the property by some or all of the amount of any outstanding PACE obligation?*

²⁸ 2nd Roc-Jersey Associates v. Town of Morristown, 158 N.J. 581, 595, 731 A.2d 1, 9 (1999)

²⁹ supra fn 9, fn 10, fn 11, and fn 12

³⁰ supra fn 24

- *What is the effect on the financial risk borne by the holder of any mortgage interest in a subject property if first-lien PACE programs do not provide any such protections or disclosures?*

First lien PACE programs provide homeowners protection from the possibility that subsequent purchasers will reduce their offer amount by the outstanding PACE obligation by ensuring that the SIR is greater than one. As already discussed, the value of the property with energy efficiency improvements increases more than the cost of the outstanding PACE obligation. So logically, even if the purchaser reduces the offering price by the amount of the outstanding PACE obligation, the offer will still be net greater than the house without the improvements.³¹

Even if a program's protections fail, the financial risk borne by the mortgage holder either remains the same or decreases. Since the SIR is greater than one, the property is worth more and is more attractive to potential buyers with the efficiency improvements. Should the mortgage holder become the owner through foreclosure, the holder need not pay the full assessment because PACE loans are not subject to acceleration. Further, any increased taxes paid by it prior to reselling the property are more than offset by the increased value of the property.

F. Considerations Relating to FHFA's Intent To Prepare an EIS

1. FHFA's Proposed Action

FHFA would direct the Enterprises not to purchase any mortgage that is subject to a first-lien PACE obligation or that could become subject to first-lien PACE obligations without the consent of the mortgage holder. FHFA believes that the Proposed Action is reasonable and necessary to limit, in the interest of safety and soundness, the financial risks that could be involuntarily borne by the Enterprises, thereby preserving and conserving the Enterprises' assets and property while protecting American taxpayers from further loss.

2. No Action Alternative

The No Action Alternative is to withdraw the July 6, 2010 Statement and the February 28, 2011 Directive. This would allow the Enterprises to purchase mortgage loans secured by properties with outstanding first-lien PACE and PACE-like obligations.

3. Other Alternatives

Question 17:

- *What specific alternatives to FHFA's existing statements about PACE should FHFA consider?*
- *For each alternative, as compared to the Proposed Action, what positive or negative environmental effects would result?*

FHFA's proposed action, to direct the Enterprises not to purchase any mortgages that are subject to first lien PACE obligations, has significant negative impacts to the environment and

³¹ *supra* fn 9, fn 10, fn 11, and fn 12

such impacts must be shown by preparing a thorough Environmental Impact Statement (EIS). The announcement of the proposed action has halted energy efficiency programs in over twenty states. As discussed above, these programs were providing financing for efficiency projects that otherwise would not have been completed.³²

The no action alternative, ie withdrawing FHFA's directive, would positively impact the environment. The no action alternative would allow the boom in clean, renewable energy and energy efficiency projects to resume in more than twenty states. This development will lead to less energy used, less coal mined, less oil and gas drilled, and less resulting air and water pollution. The White House Middle Class Task Force found that the nearly 130 million homes in the U.S. "generate more than 20 percent of our nation's carbon dioxide emissions, making them a significant contributor to global climate change. Existing techniques and technologies in energy efficiency retrofitting can reduce home energy use by up to 40 percent per home and lower associated greenhouse gas emissions by up to 160 million metric tons annually by the year 2020. Furthermore, home energy efficiency retrofits have the potential to reduce home energy bills by \$21 billion annually, paying for themselves over time."³³

Other alternatives that FHFA could consider include formally adopting the DOE's recommendations or modified versions of those recommendations. However, making the DOE's guidelines into rigid federal requirements may hamper flexibility to adapt programs to local market conditions. Strict federal requirements may also negatively impact successful existing PACE programs.

Sincerely,



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³² supra fn 24

³³ supra fn 19