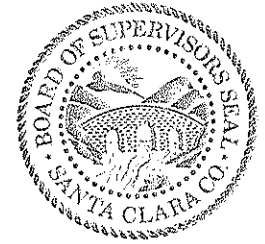


**GEORGE M. SHIRAKAWA**  
**PRESIDENT, BOARD OF SUPERVISORS**  
**COUNTY OF SANTA CLARA SUPERVISOR, SECOND DISTRICT**  
COUNTY GOVERNMENT CENTER, EAST WING  
70 WEST HEDDING STREET, 10TH FLOOR  
SAN JOSE, CALIFORNIA 95110  
TEL: (408) 299-5020 FAX: (408) 295-8642  
george.shirakawa@bos.sccgov.org • www.supervisorshirakawa.org



March 22, 2012

Mr. Alfred Pollard  
General Counsel  
Federal Housing Finance Agency  
400 7<sup>th</sup> Street, N.W.  
Washington, DC 20024

**RE: RIN 2590-AA53 Mortgage Assets Affected by PACE Programs; Comments on  
Advanced Notice of Proposed Rulemaking and EIS Scoping Comments**

Dear Mr. Pollard:

The County Santa Clara, California Board of Supervisors appreciates the opportunity to comment on the Federal Housing Finance Agency's Advanced Notice of Proposed Rulemaking related to the Property Accessed Clean Energy (PACE) program.

The original decision by the Federal Housing Finance Agency (FHFA) to enjoin the application of a PACE lien mechanism substantially and adversely impacted energy efficiency retrofit programs across the United States, including that of the County. PACE provided for a responsible funding process and overcame two major barriers to the marketplace in energy efficiency construction: the small number of local governments capable of sequestering general fund monies for this purpose, and the inability of most homeowners to secure additional credit in a still-recovering real estate market and the persistent lack of credit extended by banks and lending institutions. As a result, we and our peers in government throughout the United States were forced to relinquish a tool for stimulating local economies, reviving the construction industry and incentivizing training in that workplace sector, and providing relief to our citizens in the form of lower energy costs, greater water conservation, improved indoor air quality, and enhanced family health. We urge FHFA to look for ways to accommodate these programs and adopt reasonable underwriting standards that ensure local PACE programs are designed to maximize benefit and minimize risk as described below.



**PACE assessments are valid and are not "loans" as asserted by FHFA**

FHFA has repeatedly referred to PACE assessments as "loans," but they are not. PACE assessments are property tax assessments with characteristics similar to those of more than 37,000 other land-secured special assessment districts in the United States that are rooted in hundreds of years of state and local law. Such districts are typically created at the voluntary behest of property owners who vote to allow their governments to finance public improvements such as sewer systems, sidewalks, lighting, parks, open space acquisitions, and business improvements on their behalf. Other districts allow property owners to act voluntarily and individually to adopt municipally financed improvements to their property that are repaid with assessments. PACE districts are similar to many other special assessment districts as well, in the size of their assessments and length of their repayment period.

**PACE assessments present minimal risks to lenders, investors, homeowners, and GSEs**

FHFA has asserted that PACE assessments "pose unusual and difficult risk management challenges for lenders, services, and mortgage securities investors." However, there is no evidence to substantiate this comment. Rather, energy efficiency and renewable energy improvements allow property owners to expand the performance and economy of their homes. As a result, homeowners' energy bills are reduced and their property's value increases. This strengthens their financial position and increases the value of a lender's collateral. Additionally, those local governments that established PACE programs prior to July 2010 developed program standards to protect lenders and consumers. Finally, the early results of the few jurisdictions with sufficient reserves to fund their own PACE Programs (e.g., Sonoma County, Placer County and the City of Palm Desert in the State of California, Boulder, Colorado, and the Township of Babylon, New York) show that PACE presents minimal risk. For example, contrary to claims that PACE is a precarious and irresponsible debt instrument, the County of Sonoma has secured more than 1500 residential projects with its PACE liens, and experienced less than two-tenths of one percent default rate (< 3 defaults). This trend of fiscal security and reliability is common to all jurisdictions independently implementing PACE, who used common lending criteria that arguably would have secured programs nationwide.

**Home energy improvements financed with PACE achieve important economic and environmental benefits**

PACE financing has the potential to stimulate consumer demand and capacity, which in turn creates and sustains the jobs so desperately needed throughout America's communities. It is a means to grow the green economy that now drives the economic expansion of other countries, to promote energy efficiency and independence, and to redirect unnecessary energy expenditures to the pressing needs of families. These

outcomes serve the public interest and should be considered as part of the economic considerations resulting from PACE programs.

At the time of FHFA's actions in July 2010, our County was about to initiate a pilot PACE program that would allow for the retrofit of approximately 500 homes. However, the implementation of our program was suspended in light of the uncertainty of PACE programs. We strongly urge FHFA to reconsider its opposition to PACE programs and to revise the Statement and Directive. We further recommend that FHFA's proposed rule provide that Fannie Mae, Freddie Mac, and any other mortgage lenders regulated by FHFA be allowed to buy residential mortgages with PACE assessments that are originated by programs that conform to standards and guidelines such as those established in HR 2599 to protect the interests of local governments, homeowners, mortgage lenders, and Government Sponsored Enterprises (GDEs).

We also request that the Proposed Action in FHFA's Environmental Impact Statement (EIS) be changed to provide that the Enterprises may purchase mortgages subject to a first-lien PACE obligation or that could become subject to first-lien PACE obligations so long as the applicable PACE program conforms to standards and guidelines such as those established in HR 2599 or the Department of Energy's "Guidelines for Pilot PACE Financing Programs" (May 7, 2010). If FHFA does not alter the Proposed Action, one of the alternatives analyzed in the EIS should be revisions to the FHFA's July 6, 2010 Statement and February 28, 2010 Directive to provide that the Enterprises are permitted to purchase mortgages subject to a first-lien PACE obligation or that could become subject to first-lien PACE obligations provided the applicable PACE program conforms to standards and guidelines such as those established in HR 2599 or the DOE Guidelines.

We believe that these actions provide a practical and promising way forward toward redefining our nation's energy generation and use. Again, the County appreciates the opportunity to comment on FHFA's Advanced Notice of Proposed Rulemaking related to the Property Accessed Clean Energy (PACE) program.

Sincerely,



George Shirakawa  
President, Board of Supervisors

c: Board of Supervisors  
Jeffrey V. Smith, County Executive  
Paul Brown, Prime Policy Group