GOVERNMENT OF THE DISTRICT OF COLUMBIA

District Department of the Environment

Office of the Director

March 26, 2012

Mr. Alfred Pollard
General Counsel
Federal Housing Finance Agency
400 7th St., NW
Washington, DC 20024

RE: Mortgage Assets Affected by PACE Programs (RIN 2590-AA5)

Dear Mr. Pollard,

On behalf of the District Department of the Environment and our partnership of agencies and private firms working to implement a Property Assessed Clean Energy (PACE) program for the District of Columbia, I am pleased to provide comments on the Advance Notice of Proposed Rulemaking concerning mortgage assets affected by PACE programs. The District of Columbia sees PACE as a critical tool to spur economic development, improve energy security, and reduce environmental damage.

We strongly believe the Federal Housing Finance Agency (FHFA) should allow regulated entities to purchase mortgages with PACE assessments that conform to underwriting standards outlined in HR 2599 (The PACE Assessment Protection Act). With sufficient underwriting standards, the interests of all parties involved will be protected.

PACE programs will spur economic growth and create local jobs. For every million dollars of PACE assessments issued in the District of Columbia, we expect to create or retain 10 to 15 jobs. Nationally, the Brookings Institution estimates that $15 billion in gross economic output and 226,000 jobs would be created or retained if just one percent of single family homeowners across the country were to invest in energy upgrades financed with a PACE assessment.[1]

FHFA's position that PACE assessments are not like traditional special tax assessments is inaccurate for several reasons. In less than three years, twenty-seven states and the District have passed legislation allowing the creation of PACE districts. This legislation was written based on the principle that PACE districts meet the public benefits test. State courts in California and Florida have upheld the validity of PACE, making it clear that PACE assessments should be treated the same as other special assessments.

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[1] Mark Muro and Devashree Saha, Bring Residential PACE Back to Life, Brookings Institution, February 22, 2012), available at http://www.brookings.edu/opinions/2011/0830_clean_energy_muro_saha.aspx, (accessed on February 28, 2012).

The FHFA proposed rulemaking implies there is a significant difference between PACE assessments and other types of special assessments due to the voluntary nature of PACE assessments. However, in reality, most special assessments are similarly voluntary given that property owners within the boundaries of the special assessment district must vote to approve the proposed improvement. FHFA's assertion that PACE assessments are of a longer duration than most other assessments is also not supported by the evidence. Many assessments for public projects are perpetual and many others have terms of 30 years or more.

FHFA understandably wants to limit the risk that regulated entities bear when purchasing and holding mortgages. However, we strongly disagree with the premise that a PACE assessment adds significant risk to any party involved. According to research conducted by the American Council for an Energy Efficient Economy (ACEEE), default rates on energy efficiency loans are less than three percent[2] nationally. Furthermore, initial data show default rates on mortgages with PACE assessments are close to zero. Given that most PACE initiatives are designed as market-based programs that must attract private capital to scale, stringent underwriting standards are critical in order to build a viable market for securities backed by PACE assessments. To the extent that the PACE program follows the guidelines specified by the U.S. Department of Energy and HR 2599, a PACE assessment should have no negative effect on a lender's financial risk since a property owner with lower operating costs will have a greater ability to pay the mortgage and the special assessment.

In addition, PACE programs contain built-in protections that limit the financial risk that a property owner is exposed to when investing in energy efficiency. Stringent underwriting standards, including conservative loan to value requirements, greatly reduce the risk of default. By ensuring that the savings-to-investment ratio is greater than one (including all fees in the investment amount), most property owners who implement a PACE project will increase their ability to pay their mortgage. In the PACE structure, the tax assessments do not accelerate in the event of default, and owners are only responsible for the amount in arrears. Coupled with stringent underwriting guidelines, non-acceleration further decreases the burden of PACE assessments on the properties.

PACE is a more effective energy efficiency financing solution than most other options, and addresses key barriers that prevent other programs from succeeding. The primary advantage of the PACE financing structure is that, unlike most energy efficiency financing programs, PACE is market-based and has the capacity to scale without using taxpayer dollars. Due to the secure nature of PACE assessments and the potential for long repayment periods, PACE assessments are more affordable than most energy efficiency financing options, and they help to align the repayment of the investment with the timeframe of the energy savings over the useful life of the improvements. As with any other special assessment, PACE assessments are assumable and remain with the property on sale. In general, PACE assessments

[2] "WHAT HAVE WE LEARNED FROM ENERGY EFFICIENCY FINANCING PROGRAMS?" Hayes, Nadel, Granda, and Hottel, ACEEE, September 2011.

will be a more attractive financing option for homeowners than most unsecured financing programs which often are unable to provide the level of affordable financing necessary to fully fund projects.

In summary, unlike many energy efficiency financing programs, PACE is a structure that can scale, is market-based, and can provide important public benefits. FHFA's prohibition on PACE goes against the interests of taxpayers and hampers critical efforts to drive economic development, improve energy security, and tackle the significant challenge we face to dramatically and quickly improve the energy performance of our building stock—the largest contributor to energy consumption and greenhouse gas emissions.

We urge the FHFA to allow regulated entities to purchase mortgages with PACE assessments that adhere to adequate underwriting standards. Thank you for the opportunity to submit these comments.

Sincerely,

Christophe A. G. Tulou
Director, District Department of the Environment
Government of the District of Columbia