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March 26, 2012

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

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

Dear Mr. Pollard,

The following comments are responsive to the questions posed by the Federal Housing Finance Authority in the Federal Register Vol. 77, No 17, Thursday, January 26, 2012.

By way of context, Decent Energy, Inc., is a privately held company headquartered in Leawood, KS. It serves homeowners, small businesses, and non-profits in Eastern Kansas and Western Missouri, with services that include independent energy audits, as well as small renewable systems. Decent Energy, Inc., also provides consulting on energy efficiency and renewable energy.

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?

Some alternative conditions and restrictions relating to FHFA-regulated entities' dealings in mortgages on properties participating in PACE programs are advisable. In particular, the Department of Energy's "Guidelines for Pilot PACE Financing Programs" (hereinafter "DOE Guidelines") identifies

practices that are more narrowly tailored to ensuring proper implementation of PACE than accomplished through the Statement and Directive. We believe that the DOE Guidelines are the appropriate starting point for developing alternative conditions and restrictions.

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 and at what cost could such parties insulate themselves from such increased risk?

The risk associated with the lien-priming feature of first-lien PACE obligations may be somewhat overstated. Specifically, we think that it is worth considering whether utility obligations are as a normative matter already senior to mortgage indebtedness. Occupied mortgaged residences require utility services. As a general matter the utility service provider has leverage equal or greater than that of the mortgage holder to ensure that the homeowner prioritizes payments. Even when a "cold weather shut off rule" or the equivalent is in effect, the utility service providers typically process a service shut off faster than the foreclosure process can proceed. As a result, we believe that utility obligations are in many instances already senior to payment of mortgage indebtedness as a matter of practice.

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; and,***
- ***The timing, direction, and magnitude of changes of property values, including the possibility of downward adjustments in value?***

If the DOE Guidelines are used as a starting point, then the combined loan to value issue is not likely a significant one in relation to energy efficiency measures. In Eastern Kansas and Western Missouri most energy efficiency improvement packages (air sealing, insulation, combustion safety measures) are well below \$10,000. Many are closer to the \$2,500 threshold that the DOE Guidelines recommend as a minimum amount for PACE participation.

Arguably combined loan to value is a deficient measure insofar as it does not reflect the aggregate utility expense of the home. As a practical matter, utility expenses are no less a carrying cost than principal, interest, taxes or insurance. As a result it would be analytically inconsistent to look at improvement expenses in relation to loan to value standards, but not look at the aggregate utility expenses that will be incurred without improvement.

Although energy efficiency and renewable energy technology will evolve, there is simply no cost effective way to maintain a home as state of the art at all times. What will remain constant as technology evolves is the wisdom of a loading order that requires that cost effective efficiency measures be implemented before renewable systems be installed. Air sealing, insulation, and other efficiency measures are less subject to ongoing maintenance than mechanical systems. As such, prioritizing these relatively lower cost ways of reducing loads is financially prudent. Further, implementing ground source heat pumps (sometimes incorrectly referred to as "geothermal" systems), or replacing heating and or cooling equipment without load can produce over sizing and excess cost.

Although the timing, direction and magnitude of energy prices are uncertain, the energy efficiency measures that are prioritized recommendations often provide multiple benefits which all help improve the value of subject residence. Specifically, enhanced comfort, improved air quality, and improved safety are all byproducts of implementing energy efficiency recommendations through the Home Performance with ENERGY STAR® protocol. The Home Performance with ENERGY STAR® protocol requires that the energy auditor prioritize recommended improvements based on testing, building science analysis and a view of how the many systems within the home interrelate. The Home Performance with ENERGY STAR® program is more than ten (10) years old, has evolved, and grown incrementally.

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; and,*
- *The timing, direction, and magnitude of changes of property values, including the possibility of downward adjustments in value?*

Requiring implementation of the Home Performance with ENERGY STAR® protocol would be a relatively low, or no cost requirement. In addition it would help ensure consistency in energy audit methodology which is presumably valuable when dealing with packages of mortgage assets.

Part of the Home Performance with ENERGY STAR® protocol involves homeowner education as to the role and benefits that different types of energy improvements play. This educational function can play a risk mitigating role in relation to concerns over potentially shifting preferences. By way of example, many homeowners incorrectly believe that window replacement is that appropriate response to draftiness. And while they may still have an interest in replacing selective windows post- audit, when they are educated as to the role of infiltration, the preferences shift in weight. Educating homeowners on the different systems within the home, the relationship between them, and proper maintenance can help maintain the value of housing stock.

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?

Grants and government benefits are not comparable in that they unlikely to be politically sustainable, and have never provided sufficient funds to wholly accomplish more than the minimum in energy efficiency improvement projects. The balance of the sources are addressed in the following chart, with (-) designating disadvantages, and (+) designating advantages:

	Self-finance	Bank finance	Leasing	Contractor	On-bill
Share Lien Priming (See response to Question 2- normative priority trumps legal in practice)	No	No, though may force refinance	No though potential for dispute as to systems that are not Permanently affixed	No though mechanics liens may pose issues	No
Homeowner	(-) May not have cash	(-) Finance cost may be higher than PACE in that there is lesser aggregation of small loans (-) Complex process for Relatively modest improvement cost	(-) Finance cost may be higher than PACE in that there is lesser aggregation of small loans, and most improvements will be deemed part of structure (-) Complex process for Relatively modest improvement	(-) Finance cost may be higher than PACE in that there is lesser aggregation of small loans (-) Contractor is ill suited to manage consumer lending related privacy compliance or financial disclosures	(+) Easy (-) Costly software implementation for utilities means that it will remain relatively unavailable, or that additional costs will be passed along through utility rate increases
Mortgage Holder	(+) Position may become more secure than at the time that the mortgage was written	(+) Subordination is clear (-) Botched project can still Lead to financial stress	(+) No lien priming (-) may be issues of what is part of the residence, and what is not, for which lessor's Art 9 interest trumps	(-) Virtually assures that the audit will be provided by the firm implementing work, which detracts from quality assurance	(+) Easy
Environment	(-) Fewer deep retrofits will occur than with residential PACE	(-) Fewer deep retrofits will occur than with residential PACE	(-) Fewer deep retrofits will occur than with residential PACE	(-) Fewer deep retrofits will occur than with residential PACE	(-) Fewer deep retrofits will occur than with residential PACE

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?

The value of the underlying property should not change by nature of the financing mechanism. The value of the underlying property is more likely to be negatively impacted by inconsistent application of appraisal standards that permit, but do not mandate that the appraiser take into account the energy efficiency and renewable energy attributes of the home. See Appraisal Institute Form AI 820-03 Residential Green and Energy Efficient Addendum.

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?

The environmental impact of the same set of energy efficiency measures should be identical without regard to financing mechanism. The only environmental impact that choice of financing mechanism might have is where a lower cost financing alternative allows a homeowner to expand the package of improvements beyond the package that they would proceed with when using a higher cost financing tool.

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?

We are not aware of any studies on this point, although some may exist.

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?

PACE programs can provide consumer protections through implementation of the best practices approaches embodied in the Home Performance with ENERGY STAR® protocol. In addition PACE programs can enhance consumer protection through:

- a) requiring that the energy audits be accomplished by experienced auditors certified by Building Performance Institute (whose standards typically mandate a re-test in most

- circumstances which can be used for quality assurance verification) or RESNET (where combustion safety training is supplemented);
- b) ensuring that the auditors carry professional liability insurance;
 - c) prescribing reference utility costs and project useful lifetimes to ensure uniformity; and
 - d) adopting a format for the presentation of prospective financial information on the performance of renewable energy systems.

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

As it stands there are relatively few protections for homeowners with respect to home improvement projects, other than those that might exist under state law. As it stands homeowners could become financially stressed if a kitchen or bathroom renovation is botched. PACE may provide a vehicle for introducing consumer disclosures where none currently exist.

Further, it is worth noting that the stewardship of the Home Performance with ENERGY STAR® program has transferred from the Environmental Protection Agency to the Department of Energy. Historically the Department of Energy has taken a relatively prescriptive approach as to the deployment of low income weatherization funds through energy efficiency projects, and the quality of the energy efficiency improvements has been good. Insofar as the Department of Energy approaches its management of the Home Performance with ENERGY STAR® program in a similar fashion any risk of improper implementation producing a reduction in value is further diminished.

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? 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?

As provided by the DOE Guidelines the Savings to Investment Ratio (SIR) needs to be greater than 1. A higher SIR can be specified to provide a buffer. As alternative protections a program may specify fuel costs that are below the current market costs. As an additional protection, residential energy audits may include reconciliation of past fuel usage data against the modeled consumption to effect a calibration.

Question 12: What, if any, protections or disclosures do first-lien PACE programs provide to homeowner- borrowers concerning the possibility that over the service life of a PACE- financed project, the homeowner- borrower may face additional costs (such as costs of insuring, maintaining, and repairing equipment) beyond the direct cost of the PACE obligation? 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?

The most cost effective measures that we typically see- targeted air sealing, adding insulation, foaming rim joists, and sealing duct work, are not the types of improvements that typically require ongoing maintenance.

However, our residential built environment is not maintenance free. However, few homeowners receive comprehensive instruction as to the types of periodic maintenance that they should undertake, indications that maintenance is required, or the interrelationship of the various sub-systems within the home. Existing mortgage holders are not insulated from financial stress that can occur by reason of this lack of education, or from the failure to perform regular maintenance.

Part of the role that the residential energy audit plays is to make the homeowner aware of aspects of their residence that they may not understand. The result should empower the homeowner to take on more of an active role in relation to their home. If for example, an energy audit detects that a plumbing closet is open to the attic, the resulting fix with some scrap foam board may avert major plumbing damage that could lead to financial stress and possible abandonment of the home.

Further, as provided by the DOE Guidelines the Savings to Investment Ratio needs to be greater than 1, and a higher ratio may be specified.

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? 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?

As long as the purchaser has the option to retire the PACE obligation at the time that he or she purchases the residence, then the existence of the PACE obligation is no more harmful than a seller using proceeds to satisfy its mortgage lender.

Question 14: How do the credit underwriting standards and processes of PACE programs compare to that of other providers of Home-improvement financing, such as banks? Do they consider, for example: (i) Borrower creditworthiness, including an assessment of total indebtedness in relation to borrower income, consistent with national standards; (ii) total loan- to-value ratio of all secured loans on the property combined, consistent with national standards; and (iii) appraisals of property value, consistent with national standards?

We have not undertaken a national review.

Question 15: What factors do first-lien PACE programs consider in determining whether to provide PACE financing to a particular homeowner-borrower seeking funding for a particular project eligible for PACE financing? What analytic tools presently exist to make that determination? How, if at all, have the methodologies, metrics, and assumptions incorporated into such tools been tested and validated?

According to the National Renewable Energy Lab (NREL) “[t]he Building Energy Simulation Test for Existing Homes (BESTEST-EX) is a method for testing home energy audit software and associated calibration methods. BESTEST-EX is one of the energy analysis tools developed by NREL on behalf of the U.S. Department of Energy (DOE). . . . Similar to energy analysis tests previously developed by NREL, such as HERS BESTEST and other BESTEST suites included in ANSI/ASHRAE Standard 140, BESTEST-EX compares software simulation findings to reference results generated with state-of-the-art simulation tools such as EnergyPlus, SUNREL, and DOE2-1E.”

The energy audit software currently used in our marketplace by almost all auditors is BESTEST EX compliant. The requirement for such use flows through the local implementation of Home Performance with ENERGY STAR® program.

Question 16: What factors and information do first-lien PACE programs gather and consider in determining whether a homeowner-borrower will have sufficient income or cash flow to service the PACE obligation in addition to the homeowner-borrower’s pre- existing financial obligation? What analytic tools presently exist to make that determination? How, if at all, have the methodologies, metrics, and assumptions incorporated into such tools been tested and validated?

Most residential energy audit programs are restricted in their functionality to energy simulation and analysis. Use of the utility cost saving projections together with information typically required in the mortgage underwriting process could be made through a spreadsheet. Further some of the energy audit software programs are capable of exporting information in an xml or MS Access format.

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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 and how would the level of financial risk borne by holders of any interest in a mortgage on PACE- affected properties change?

An alternative formulation that allows for the piloting of PACE programs consistent with the best practices currently prevailing in the residential energy efficiency industry (i.e ., consistent with the DOE Guidelines, Home Performance with ENERGY STAR® program, BPI trained auditors, etc.)

Thank you for considering these comments. I appreciate your public service.

Very truly yours,

A handwritten signature in black ink, appearing to read "Barry M. Dicker", with a long horizontal flourish extending to the right.

Barry M. Dicker, President
Decent Energy, Inc.