



March 26, 2012

Mr. Alfred Pollard
General Counsel
Federal Housing Finance Agency
400 7th St., 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:

Efficiency First represents energy efficiency / home performance contractors in all fifty states, who work every day to improve America's homes and buildings. Our member companies tell us that one of the major barriers their customers face in improving the energy efficiency of their homes is upfront cost. That's why over the last several years, energy efficiency industry stakeholders (both public and private sector) have increasingly looked to financing as an important tool for scaling up an industry that will retrofit more homes, create jobs and help America achieve energy independence. Property Assessed Clean Energy (PACE) has enormous potential to reduce customer utility bills, save energy and create jobs – both in local communities and in upstream building product manufacturing and distribution chains. PACE legislation has been passed by 28 states and has strong bi-partisan support in states and local communities across the nation, and at the federal level in Congress and in the White House.

By its action FHFA destroyed jobs and negatively impacted small. We believe that the action to halt local government PACE programs on July 6, 2010 was unwarranted. This rulemaking provides an opportunity to establish a fact-based record and correct misinformation and misunderstandings, to the benefit of all stakeholders: homeowners, small businesses who install retrofit measures, domestic building product manufacturers and distributors, mortgage lenders, homeowners, and our nation. To this end, we recommend that the FHFA adopt reasonable underwriting standards that ensure local PACE programs are designed to maximize benefit and minimize risk, as described below.

As part of the PACENow Coalition, we assert and recommend the following:

1) PACE assessments are valid - and are not “loans” as asserted by FHFA

FHFA has repeatedly referred to PACE assessments as “loans.” To the contrary, they 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 local 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.

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

FHFA asserts that PACE presents “significant safety and soundness” concerns, but there is no evidence that this is true. There is long-standing experience, borne out by studies, that energy efficiency and renewable energy improvements reduce homeowners’ energy bills and increase their property’s value, strengthening their financial position and increasing the value of a lender’s collateral. PACE financed improvements allow homeowners to hedge themselves against fuel price spikes and rising fuel costs over time. These factors lessen, if not eliminate, the safety and soundness risk than the FHFA has asserted. Local governments that established PACE programs prior to the July 6, 2010 action by FHFA developed program standards to protect lenders and consumers. The White House (October 18, 2009) and the Department of Energy (May 7, 2010) both published national PACE guidelines with clear, strong underwriting standards to ensure that homeowners are able to afford the improvements. A bi-partisan bill in the House of Representatives (HR 2599 – Hayworth R-NY19) further delineates national standards to minimize risk to lenders and consumers. Finally, the early results of PACE pilot programs in Boulder County, CO; Sonoma County and Palm Desert, CA; and Babylon, NY; show that PACE presents minimal risk: there are only a handful of known defaults out of nearly 3,200 upgraded properties, substantially fewer than the rate of default for non-PACE property-owners in the same districts.

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

State and local governments have also passed PACE laws because PACE has great potential to help governments attain important economic and environmental goals. For example, according to a May 2011 Department of Energy study, the Boulder County PACE program created over 120 jobs, generated more than \$20 million in overall economic activity and reduced consumers’ energy use by more than \$125,000 in the first year alone. These benefits are important by themselves. In developing a rule that serves the public interest, the FHFA must weigh perceived risks against economic benefits that clearly reduce default rates.

4) Proposed Rule:

We strongly urge FHFA to reconsider its blanket opposition to PACE programs and to revise the Statement and the Directive. We recommend that FHFA’s proposed rule provide that Fannie Mae, Freddie Mac, and any other mortgage lenders regulated by FHFA (Enterprises) 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 (The PACE Assessment Protection Act) to protect the interests of local governments, homeowners, mortgage lenders and Government Sponsored Enterprises (GSEs).

5) EIS Scoping Comments

The Proposed Action in FHFA’s Environmental Impact Statement (EIS) should 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 (The PACE



Assessment Protection Act) or the Department of Energy's "Guidelines for Pilot PACE Financing Programs" (May 7, 2010) (DOE Guidelines). 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 so long as the applicable PACE program conforms to standards and guidelines such as those established in HR 2599 or the DOE Guidelines.

Sincerely,

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Efficiency First is the trade association for America's home performance industry – uniting home performance companies, building product manufacturers and related businesses and organizations.

Efficiency First represents its members in public policy and regulatory discussions at the local, state and national levels to promote the benefits of energy efficiency retrofitting, and to create market and industry demand for member products and services.

For more information: www.efficiencyfirst.org