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March 26, 2012

Edward J. DeMarco

Acting Director

Federal Housing Finance Agency

400 7th St., N.W.

Washington, DC 20024

RE: RIN 2590-AA53; Mortgage Assets Affected by PACE Programs

Dear Mr. DeMarco:

Pursuant to the Federal Housing Finance Agency's ("FHFA") Advance Notice of Proposed Rulemaking ("ANPR") (77 Fed. Reg. 3958, et seq., January 26, 2012), Leon County, Florida and the Leon County Energy Improvement District (collectively "Leon County") provide the following and attached comments.

As you know, Property Assessed Clean Energy ("PACE") programs are implemented by local governments allowing property owners to finance energy efficiency and renewable energy projects (and in Florida wind resistance projects) for their homes and commercial buildings, which are repaid through non-ad valorem assessments on the property owner's annual property tax bill. In Leon County's program, these assessments are not loans, and this method of repayment is critical to the success of the program because it allows Leon County to provide lower interest rates on the financing to attract participants. Without this low interest rate incentive, Leon County's energy conservation and job creation goals cannot be accomplished.

Leon County's Program

Leon County created its PACE program, known as the Leon Energy Assistance Program ("LEAP"), in 2010. LEAP is Florida's first Energy Improvement District.

Eligibility criteria for LEAP participants are designed to ensure financing repayment while achieving Leon County's specific energy conservation goals. The criteria for property owners' participation include: the applicant must own the property; the applicant must be current on the mortgage; there must be no involuntary liens encumbering the property; and the proposed improvements must be reasonable for the value of the property. LEAP capped financing at \$7,000.00 for initial Program development. Property taxes cannot be delinquent in the last five years (whereas State law only requires three). The property owner also must consent to provide the

County access to verify that the improvements have been completed, and the applicant must provide notice to any lender of any adjustment to monthly payments (and maximum principal financed) 30 days prior to entering into the written agreement for the program with the County, consistent with State law.

Additionally, LEAP requires an energy audit to be completed. The auditor determines opportunities for energy reduction and makes prioritized recommendations. The property owner must obtain three quotes from licensed contractors, and the quotes must include the contractor's license number and all associated project costs, such as materials, equipment, permitting fees, recording fees, audit costs, and contingency fees.

LEAP received 105 applications within the first 24 hours after it opened, 59 of which were submitted by applicants with Fannie Mae or Freddie Mac mortgages. Thus, due to the actions by FHFA, and Fannie Mae and Freddie Mac (the "Enterprises"), LEAP's initial applicant pool effectively was reduced by more than half.

Leon County's Comments

In its ANPR, FHFA requests responses to 16 questions and scoping comments on the preparation of an Environmental Impact Statement. Leon County has attached detailed responses to the ANPR with extensive citations to relevant data. Leon County's goal in these comments is to provide input and assist FHFA's "deliberative transparent decision-making" process on its Proposed Action, and to demonstrate that restrictions on the purchase of mortgages with first-priority PACE assessment liens are unnecessary. To summarize its comments and position on the FHFA rulemaking, Leon County makes the following general assertions:

1. LEAP Assessments are not Loans

FHFA and the GSEs continue to purposefully mischaracterize PACE assessments by defining them as "loans." The authorization for these land-secured assessments and the creation of districts to effectuate those purposes is a function of state law. State legislatures have the power to create tax liens and determine their priority relative to that of other types of liens and property interests, even if the tax lien was created after other property interests came into existence. Under Florida law, a local government is expressly authorized to levy assessments for "qualifying improvements," including energy efficiency and related improvements. There is longstanding precedent in federal and state law regarding a local government's authority to levy non ad valorem or special assessments. Recasting these assessments as "loans" runs counter to these long-established principles of law protecting local governments' rights to create PACE programs.

2. LEAP Assessments do not measurably increase, and likely reduce, risk of mortgage default.

The overwhelming weight of the data reflects that energy efficiency and renewable energy improvements reduce homeowners' energy costs and increase property values. The State of Florida long has recognized the increase in property values caused by the installation of renewable energy projects. In 1980, Florida voters included the following exemption in Article VII, section 3(d), of the Florida Constitution:

By general law and subject to conditions specified therein, there may be granted an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, and for the period of time fixed by general law not to exceed ten years.

Florida clearly understands that increases in property values stem from energy conservation improvements, and the citizens and Legislature acted to ensure that tax increases due to the value of these improvements did not act as a deterrent in promoting them. This Amendment pre-dated the passage of the State's PACE legislation in 2010 by 30 years.

As referred to earlier in this correspondence, LEAP attributes, like most PACE programs are designed to protect property owners and create positive cash flow, thus enhancing the ability to repay the underlying mortgage. Specifically, LEAP achieves this result by having an energy audit conducted so property owners know what the energy savings is projected to be. This enables the property owner to determine if the cost-benefit of participation in LEAP is worthwhile. LEAP also requires that the improvements must be reasonable for the scope of the property project and to the property value as approved by the District. Again, these requirements assure that property owners benefit and are in a better position to repay their mortgages. Finally, LEAP generally limits the financing amounts to \$7,000 for residential properties.

3. Existing Restrictions on the Regulated Entities' dealing in mortgages with PACE first-priority liens are unnecessary.

Best practices and guidelines have already developed across PACE programs nationally due to program goals of managing risk to mortgage holders/property owners and limiting the government's exposure in implementing the program. These best practices generally evaluate the property owner's history and ability to repay the financing as well as limit and control the types of projects (and the amount of financing) the property owner can receive through the program. This assures that

positive cash flow is achieved. PACE program costs (interest rates, administrative costs, and fees) must be kept low or the positive cash flow goal is not achieved. Finally, mortgage holders (and investors) already have a multitude of tools that are used to evaluate risk for lending and refinancing. Additional restrictions on PACE programs are unnecessary because the market already necessitates managing risk for programs to be successful.

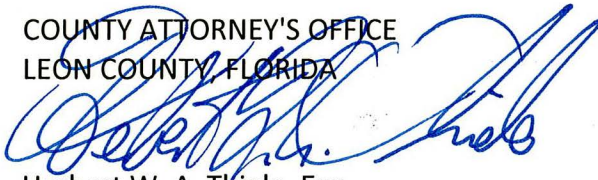
Conclusion

Considering the foregoing and the attached detailed comments, Leon County urges FHFA to adopt the No Action Alternative and withdraw its July 6, 2010 Statement and all other related documents. These actions have effectively stopped the development of PACE programs nationally for residential homeowners, and the adoption of the No Action Alternative would allow the Enterprises to purchase mortgage loans secured by properties with outstanding first-lien PACE and PACE-like obligations, freeing residential homeowners to make much needed energy conservation improvements. Leon County asks FHFA to work in good faith with other federal agencies (such as the U.S. Department of Energy), states, and communities to address any outstanding implementation issues and concerns. If protective guidelines are necessary, the standards and best practices in the U.S. Department of Energy's "Guidelines for Pilot PACE Financing Programs" (May 7, 2010) minimize any perceived risk posed by PACE programs while allowing local governments to design programs that meet their goals. The Guidelines already are widely used and have resulted in successful PACE program implementation.

Leon County appreciates the opportunity to participate in FHFA's rulemaking process and, should you have any questions or need additional information, please contact the County Attorney's Office.

Sincerely yours,

COUNTY ATTORNEY'S OFFICE
LEON COUNTY, FLORIDA



Herbert W. A. Thiele, Esq.

County Attorney

HWAT/ea

cc: Honorable Chairman and Members of the Board of County Commissioners

Vincent S. Long, County Administrator

Ken Morris, Director, Office of Economic Development and Business Partnerships

Maggie Theriot, Director, Office of Resource Stewardship

Sarah Vilms, Esq.

Comments of Leon County, Florida and the Leon County Energy Assistance Program in Response to the Federal Housing Finance Agency's Advance Notice of Proposed Rulemaking Requesting Comments on the Effects of Property Assessed Clean Energy Programs on Mortgage Assets (RIN 2590-AA53)

The following comments are provided to address the specific questions set forth in the Federal Housing Finance Administration's January 26, 2012, request for comments concerning Mortgage Assets Affected by PACE programs. While neither Leon County nor any other commenting entity is responsible for fulfilling the FHFA's legal obligation to provide the substantive basis for its rule, Leon County provides the following comments and information in response to the questions set forth in the Advanced Notice.

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?

Specific conditions and restrictions relating to the FHFA-regulated entities' (Fannie Mae and Freddie Mac, collectively the "Government Sponsored Enterprises" or "GSEs") dealings in mortgages on properties participating in PACE programs are not necessary. PACE program "best practices" have been developed that ensure stability and manage risk for both governments and mortgage lenders concerning PACE programs. These best practices include:

- White House Policies,
- Department of Energy's ongoing Guidelines for Home Energy Professionals project establishing strong national standards for retrofit work, and
- Efforts by states and local governments to develop their own best practices during PACE program implementation.

These practices provide for the necessary flexibility to capture local and state program goals as well as the influences of differing state laws. PACE program best practices, and the GSEs' existing processes for managing risk, such as appraising, valuing, and evaluating program participant mortgages, provide substantial and sufficient protection for PACE participants, mortgage investors, lenders, and underwriters, and obviate the necessity for blanket conditions or restrictions on the GSEs' dealings with PACE-related mortgages. The lending evaluation process for mortgages or refinancing already captures any potential impact a PACE assessment may have on a borrower or property's value; therefore, on a case-by-case basis, the mortgage lender can decide the best course of action when a property has a PACE lien or is in a jurisdiction where one could be imposed. Wholesale prohibitions on mortgage purchases with PACE or potential PACE liens are unwarranted.

In October 2009, recognizing the need to balance local autonomy with the development of PACE programs, the White House developed a "Policy Framework" for PACE programs.ⁱ The Department of Energy proffered similar Guidelines in May 2010.ⁱⁱ Out of these guidance documents, best practices have developed into two broad categories: 1) Elements of Program

Design and 2) Consumer/Lender protections. The practices can be summarized as follows (with some falling under elements of both categories):ⁱⁱⁱ

<u>Program Design:</u>	<u>Consumer/Lender Protections:</u>
<ul style="list-style-type: none"> • Application process & review • Energy review or auditing to determine project feasibility • Term of the assessment repayment^{iv} • Licensing of auditors, installers and contractors • Use of incentives and rebates to offset financing amount • Collection of program data 	<ul style="list-style-type: none"> • Non-acceleration features of assessment repayment • Savings to Investment ratio on the projects • Size of financing amount • Education of participants • Debt reserve funds • Evaluation of outstanding debt on property and its value. • Ability of property owner to repay and consideration of history • Escrow • Recording processes • Equity requirements

Leon County’s PACE Program, the Leon Energy Assistance Program (“LEAP”), and Florida law (Section 163.08, F.S.) include most, if not all, of these best practices. In fact, some LEAP criteria are more conservative than these practices based on program goals.

In sum, sufficient protections already exist in the marketplace, particularly when existing guidance is coupled with the protections incorporated into individual PACE programs such as LEAP.

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?

In a recent study, the American Council for an Energy-Efficient Economy (“ACEEE”) found that energy efficiency financing programs “have one of the lowest default rates of any loan program.”^v The ACEEE study analyzed 24 different loan programs and found default rates ranging from zero to three percent, which it noted “compares very favorably with residential mortgage default rates of 5.67 percent...” *Id.* This runs contrary to prior unsubstantiated statements by the FHFA that first-lien PACE programs present “significant” risk. Default rates on PACE programs are very low: “Default rates for efficiency programs have been low, typically

less than one percent. These low default rates are likely a result of careful underwriting in a small number of programs and the fact that energy efficiency measures actually reduce borrowers' day to day expenses, thus making loan payments affordable."^{vi}

Other federal lending programs recognize this fact. For example, a recent fact sheet on FHA energy lending products provides: "Because your home will be more energy efficient, you will save on utility costs and, therefore, be able to devote more income to the monthly mortgage payment."^{vii} PACE programs effectively reduce the property owner's monthly cash outlay and increase the value of the property.

Implementation of best practices, coupled with low default rates, means low risk. Nonetheless, the GSEs still have many tools and the ability and opportunity to analyze and evaluate risk in individual PACE jurisdictions and programs, making blanket prohibitions on mortgage purchases in these jurisdictions unnecessary.

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?***

Risk is inherent in any mortgage or refinancing, including mortgages with higher and lower priority liens resulting from taxes, assessments, home equity loans, and the like. As noted above, energy efficiency loan program default rates compare very favorably to residential mortgage default rates, we believe due to the conditions on, and the best practices incorporated into, the existing PACE programs. Not only do PACE programs increase property values, but they essentially provide an "extra layer" of scrutiny on the borrower and the improvements proposed, because most programs, including LEAP, require positive cash flow. In short, PACE programs like LEAP will not authorize financing, and thus establish priority liens, on risky properties or property owners.

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 typical lending institution already has several processes in place to manage risk to the mortgage investment. Additionally, lenders have several policies and procedures in place with which to manage that risk, such as the appraisal and valuation process. For instance, the Federal Deposit Insurance Corporation (FDIC) provides guidance on risk assessment similar to the evaluations that mortgage lenders already should be making, such as:^{viii}

Monitoring Collateral Values. Consistent with lending regulations and guidelines, an institution already should be monitoring collateral risk on a portfolio and on an individual credit basis. Under their appraisal regulations, institutions have the right to require an appraisal or evaluation when there are safety and soundness concerns on an existing real estate secured credit. Therefore, an institution should be able to demonstrate that sufficient information is available to support the current market value of the collateral and the classification of a problem real estate credit.

Portfolio Collateral Risk. Prudent portfolio monitoring practices include criteria for determining when to obtain a new appraisal or evaluation. Among other considerations, the criteria typically address reductions in the credit since origination, or changes in market conditions. In assessing whether changes in market conditions are material, an institution considers the individual and aggregate effect of the changes and the risk in its real estate lending programs or credit portfolios.

Modifications and Workouts of Existing Credits. Institutions can make an informed decision on whether to engage in a modification or workout of an existing real estate credit. A loan modification to an existing credit involves a limited change(s) in the terms of the note or loan agreement and does not require a new appraisal or evaluation. A loan workout can take many forms, including a renewal or extension of loan terms, the advancement of new monies, or a restructuring with or without concessions.

An additional consideration is the current underwriting and appraisal process. It is important for the appraiser to provide the lender with a reliable opinion of the market value of the property with adequate and accurate data supporting the conclusions of the appraisal report. The appraisal is used to judge the property's acceptability for the mortgage loan requested in terms of its value and marketability. Fannie Mae already recognizes the importance of capturing the value of energy efficiency improvements in the appraisal process with the following guidance:

- Determine the as-completed value of the property subject to the energy improvements being completed.

- Verify the improvements are completed, including photographing the completed improvements.^{ix}

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);

To be competitive, PACE programs are forced to keep program fees low or property owners will shift to other financing vehicles that are more competitively priced. Programs that have been implemented thus far are not in the 10% fee range as stated in the ANPR or they would be cost prohibitive. Data and studies to date show that rates hover in the 6-8% range.^x If the return on investment is not offset by the monthly energy savings, then the applicant should not participate in the program and thus program design becomes important to assure the potential applicant has all the necessary information to make the investment decision. This cost-benefit evaluation is no different than determining interest rates and administrative fees on home equity loans, lines of credits, and other loan products.

In particular, Leon County is making a great effort to reduce administrative fees with LEAP to assure applicants receive the best information and lowest costs to make an informed decision about participation in LEAP. LEAP has even committed \$40,000 of general revenue to cover the costs associated with 100 energy audits. Other PACE programs have used grant funds to keep program costs low.

To contrast the low administrative fees associated with PACE programs, more traditional home equity lines of credit have closing costs, minimum monthly payments, variable interest rates and adjustments. Some loans or lines of credit have large one-time upfront fees, others have closing costs, and some have continuing costs, such as annual fees. See recent interest information for a home equity line of credit ranging from 6.49-8.99% not including fees and costs, with minimum APR estimated at 4.24% and maximum APR is 18% (not including costs).^{xi}

The timing and nature of advancements in energy-efficiency technology;

Considerations of advancements in efficiency technology exist regardless of the type of financing structure employed for energy related improvements, even those financed through home equity or GSE energy loan products. The application process for PACE is designed to ensure that the scope of the improvement is reasonable for the value of the property, and this is a criterion of LEAP. As long as the improvements are reasonable and designed to capture sufficient energy savings to offset the costs of repayment, advancements in technology are irrelevant. PACE best practices already address these issues in terms of establishing appropriate thresholds for total financing and assuring costs of repayment are offset by the energy improvements realized. Most programs list appropriate improvement projects to assure technologies are current and maximize cost savings.

Other energy efficiency mortgage and loan product providers have come to the same conclusion, albeit permissive in the program requirements. For instance, Energy Star documentation states: "You may finance into your mortgage the cost of the energy-efficient improvements determined to be 'cost effective,' which means that the total cost of the improvements, including any maintenance costs, is less than the total present value of the energy saved over the useful life of the energy improvement."^{xii} PACE program requirements typically are more stringent than what would be required under a generic home improvement loan or line of credit. In LEAP, these evaluations are mandatory, not permissive.

The timing and nature of changes in potential homebuyers' preferences regarding particular kinds of energy-efficiency projects;

Given that the goal of PACE programs is to implement energy efficiency projects that save money, changes in homebuyer preferences should not have any effect as long as the projects still are reducing energy costs. A PACE-funded energy efficiency improvement will result in a concomitant reduction in energy costs for the homeowner. A general change in buyer preference for particular products has no effect on the efficiency or cost savings resulting from products existing in a particular home, and any change in buyer preference does not mean that a homeowner can acquire additional PACE funding for new efficiency products prior to paying off the assessment for the prior products. Concerns over any effect of changes in buyer preference of energy efficiency products are unwarranted.

The timing, direction, and magnitude of changes in energy prices; and,

Electricity demand fluctuates in the short term in response to business cycles, weather conditions, and prices. Over the long term, electricity consumption increases. Energy demand growth is projected to continue at about 1% per year through 2035.^{xiii} Electricity prices in 2035 are projected at 9.5 cents per kilowatt hour (2010 dollars) in 2012 projections, compared with 9.3 cents per kilowatt hour in the 2011 projections, demonstrating a continued long term increase in energy costs for the next 25 years. *Id.*

As energy prices are expected to rise for the foreseeable future, the difference between the cost of improvements and energy savings should widen positively. At the extremes, while a dramatic reduction in energy prices might negatively affect the cost/benefit analysis for energy efficient product purchases, a dramatic reduction in energy prices likely would make it easier for homeowners to afford mortgage payments through increased cash on hand and an improving economy. On the other hand, a dramatic increase in energy prices, which is more plausible than a dramatic reduction, would place a premium on energy efficient products and homes.

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

As noted above, energy efficiency improvements to a home increase its value. Also as noted above, PACE programs are designed so that increases in savings from installation of energy efficient products offset the costs of those products. Thus, any risk associated with a downward adjustment of property value should be mitigated by the value increase and cost savings attributable to the PACE improvement.

Other federal agencies recognize this effect. For instance, HUD documents recognize the potential to increase the resale value of a property with energy efficiency improvements, touting the following with regard to its Energy Efficient Mortgages:^{xiv}

- Increase the potential resale value of your home.
- Sell your home more quickly.
- Make your house affordable to more people.
- Attract attention in a competitive market.
- Make improvements which will actually save you money.
- Increase the potential resale value of your home.

Investors and institutions can utilize the policies and procedures described above to address the potential for changes in property values, should they occur, but PACE projects will enhance value in any market condition.

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?

As discussed in the responses to Question 3, there is no data to support, and much to refute, that first-lien PACE programs significantly increase risk to mortgage holders, specifically with regard to changes in technology, preferences, energy prices, and property values. Thus, there is no need to take measures above and beyond those already in place to insulate parties from this perceived but unsubstantiated risk.

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?

Without access to private capital, there will be limited funding for efficiency retrofits; and the associated jobs, energy and cost savings, and environmental benefits will not be realized. The single family residential sector is not restricted by a lack of financial products. Numerous unsecured, second, and first-lien products are available to finance energy efficiency improvements. However, the sector is restricted by: (1) high interest rates associated with the financing; and (2) the fact that many of these financing products are cumbersome and difficult to access.^{xv} Some examples of these products, and their relative advantages and disadvantages, are presented below.

GSE, FHA and HUD energy loan, energy mortgage and line of credit products.

These products include Energy Improvement Mortgages, which allow for refinancing or an additional mortgage based on the expected monthly energy savings of the home improvements, and Energy Efficient Mortgages, which use the energy savings from a new energy efficient home to increase the home buying power of consumers and capitalize the energy savings in the appraisal. These products can also include specific federally-backed mortgage products (such as those through HUD or geared towards veterans) and home equity-based line of credit and loan products.

Strong equity in the home is required in these products, and they require full repayment before the home can be sold. Many of the largest energy efficiency loan programs have application decline rates in the 30 to 50% range. Household ability to obtain secured financing has declined as housing prices have eroded and lenders have tightened underwriting standards and credit limits.^{xvi} Similar underwriting tightening trends are occurring in unsecured lending as personal creditworthiness has weakened and lenders have responded by increasing the minimum credit scores required to qualify for financing products, thus reducing the amount of overall credit available to borrowers.

Because few investors understand the performance of loans used to finance energy efficiency, the availability and interest rates of these products is negatively affected (12-18%).^{xvii} These high-cost financing products are not designed to facilitate benefits from energy improvements because they worsen the payback period of these investments.^{xviii}

Unlike many commercial or industrial energy efficiency retrofits that can pay back within two to three years or less, investments in the residential sector typically have longer payback periods that often exceed 10 years. Because of the extended payback periods on many energy efficiency retrofits and because many energy efficiency lending products come with lending terms of less than 10 years, it is difficult or impossible to offer borrowers positive cash flow (in which periodic energy savings exceed debt service payments) as soon as they install their retrofits. As a result, a homeowner rarely will purchase an energy efficiency retrofit based only on energy savings. Long loan terms and low interest rates are the “answer,” which PACE programs provide.

The market for these financing products has yet to come to scale. There is a lack of information, uniformity, and standards that make it difficult for private lenders to evaluate the risk these types of loans present.^{xix} PACE programs overcome these obstacles, because most programs are based on the best practices that have been developed to address this lack of uniformity across product standards.

Junior Lien Programs (Vermont, Maine, Connecticut, Missouri)

Junior lien programs have higher interest rates and less participation.^{xx} For example, the Missouri junior lien program’s documents provide:

Due to Fannie Mae’s and Freddie Mac’s position on residential PACE programs, municipalities that want to create a program for financing residential energy efficiency and renewable energy improvements in the near future will need to do so on a subordinate lien basis – i.e., the lien created by the financing will be junior to the Fannie Mae or Freddie Mac backed mortgage. This structure, because it provides less security than the senior tax lien offered by PACE, makes it very challenging to develop a program that is financially workable.^{xxi}

Rating agencies use a variety of criteria to assess the overall credit quality of special assessment bonds (and the alternative financing mechanisms used to fund PACE programs). For example, Standard & Poor’s considers the method of assessment collection, value-to-debt ratios, lien position, treatment of property sales, foreclosure/bankruptcy provisions, the right to issue, term and redemption of bonds, debt service reserve, and cash flow sensitivity analyses in assessing credit quality of special assessment bonds.^{xxii} Since bonds or other financing tools secured with senior liens are much more likely to attract investors, programs with senior lien provisions are more likely to successfully finance the proposed improvements. This means that a bond’s value, or the program’s risk for financing, is directly related to a lien’s priority.^{xxiii} With a junior lien priority, a municipality is subject to most of the same risks as the mortgagee in a

traditional PACE program. Therefore, some local governments have been reluctant to adopt PACE programs with a lower lien priority and those that have are likely doing so out of lack of options caused by the FHFA and GSE objections to senior lien programs.^{xxiv}

Maine's program essentially is a revolving loan fund program supported by grant funds and repaid through a junior lien on a participant's property taxes. Maine received a \$30 million DOE funded BetterBuildings grant, \$20 million of which is being used for the Maine PACE revolving loan program. Vermont's program addresses the specific increased risk from a junior lien program by creating a loan loss reserve fund with a 2% upfront project fee and from funds provided by the Regional Greenhouse Gas Initiative.^{xxv} Both approaches add complexity to the application and repayment process for PACE.

Grant Funded or Revolving Loan Fund Programs

A revolving loan fund (RLF) is a source of money from which loans are made. Loans are made to borrowers consistent with standard lending practices. Most RLF programs have a maximum allowable payback period for projects and explicitly state what types of projects are eligible for funding. As the borrowers repay loans, the money is returned to the RLF to make additional loans. In that manner, the RLF becomes an ongoing or "revolving" financial tool. Grant funded or revolving loan fund programs either use non-private sector funds or are based on unsecured financing that is not repaid through property assessments or junior liens, although hybrid models exist combining junior liens and revolving loan funds (Maine). Most of these programs are structured similarly to typical financial institution energy loan or lines of credit. In some instances grant funds are used to "seed" longer term revolving loan fund programs. A drawback to these types of programs is that they have limited funding sources and require a significant amount of governmental resources from staff and budget to administer.^{xxvi} There also is an increase in the risk of loan defaults with revolving loan funds because they are unsecured.^{xxvii} Additionally, revolving loan products typically are limited to smaller projects and financing amounts.^{xxviii} Other disadvantages include the fact that these programs:

- Do not leverage private capital, limiting the amount of funds available (especially in the near term) and this is where grant funds sometimes are used to fill the gap if they can be obtained;
- Must conduct rigorous credit analysis on borrower's ability to pay (or risk a high default rate); and
- Costly collateral or security may be required from borrower.

Id.

On-Bill Financing

Under utility On-Bill Financing, the utility or a third party financier covers the upfront cost of an energy efficiency upgrade and the customer repays the investment through a charge on the monthly utility bill. A new report by the ACEEE took a close look at 19 on-bill financing

programs offered in 15 states. In many cases, less than 1% of eligible customers chose to participate in these programs.^{xxix}

Program costs can be escalated due to risk with collection and repayment.^{xxx} Utilities often are reluctant to take on the role of a financing entity and potential exposure to consumer lending laws, and alterations to billing systems are required. These programs can be extremely complicated to set up (on-bill tariff especially). Homeowners must pay off the entire loan upon the sale of the property, which could result in not all of the energy savings being realized (on-bill loan only).^{xxxi} It is difficult and expensive for utilities to change their billing system, creating barriers to adoption.^{xxxii}

Capital providers sometimes are leery of programs where the utility collects the funds and distributes collections to the lenders because (1) the collection practices of utilities may differ markedly from those of lenders, and (2) in the case of partial bill payment by a customer, utilities might pay themselves before paying the lender.

PowerSaver

PowerSaver is a two-year pilot program. Homeowners with “acceptable” credit and some equity in their homes can seek low-interest loans for up to \$25,000 to complete significant energy efficiency upgrades.^{xxxiii} The lenders in the pilot are committed to making the loans and the government (HUD) will back them in the event of default.^{xxxiv}

Given that this is a new pilot program, very little data exists to compare it to PACE. The regulations provide for a HUD-established list of fees and charges that may be included in a property improvement loan, thus providing evidence that the cost of financing may be similar to other GSE lending products.

Preference for PACE Programs

Unsecured financial products or junior lien programs do not effectively manage the risk of repayment/default and thus require significantly higher interest rates, administrative resources, and complex program structuring to find other ways to manage that risk.

PACE programs can be funded by bonds issued by local governments, or other forms of financing, that lower investment risk by putting the repayment of debt in a senior position allowing for the best interest rates to be passed onto the homeowners. If the borrower defaults and the property is foreclosed upon, generally only the missed payments of the PACE loan have seniority over the first mortgage and the balance is transferred to the new homeowner. This minimizes any risk to the first mortgagee because only the missed portion of a PACE lien assumes the senior lien position.^{xxxv}

First-lien PACE programs provide convenience and cheaper cost of repayment through the tax bill; increase in home values and cash flow; lead to low interest rates because of the high

security of loan repayments that have no different security position than other local government assessments; and the energy savings and reduced exposure to rising energy costs reduce the risk profile of the loan, leading to better loan performance.^{xxxvi} First-lien PACE programs simply are a better product than those discussed above, which will lead to actual energy efficiency improvements with tangible environmental and economic results that would not otherwise occur without 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?

Obviously, new windows financed through a first-lien PACE program have no greater intrinsic value than new windows financed through some other mechanism. The value to the underlying property, and thus to the property owner and any mortgage holder, is that the project gets accomplished at all, and that it gets accomplished in a manner that results in positive cash flow to the property owner. As outlined above, the reason first-lien PACE programs are popular and successful (prior to FHFA interference) is because they result in actual energy efficiency improvements and real positive cash flow through lower interest rates.

On average the additional cost of green buildings is \$4 to \$5 per square foot, and the net present value from energy savings over 20 years alone is almost 3 times greater than the cost premium.^{xxxvii} Therefore, the data suggests that the values of energy efficient homes are higher than those without the same types of improvements. Home value increases by about \$20 for every \$1 reduction in annual utility bills.^{xxxviii} The DOE supports this fact with the following: "Remodeling a kitchen with granite countertops or stainless steel fixtures, for example, might make a home more attractive to a potential buyer. In the same way, installing energy-saving appliances, windows and doors, insulation, heating and cooling equipment, and automated thermostats, to name a few energy-efficiency upgrades, can be big selling points in our energy-conscious world."^{xxxix}

Given that energy efficiency mortgages and other energy financing (non-PACE) products have the potential to have much higher transaction costs, PACE programs have a better chance of resulting in a favorable return on investment because they have a better chance of actually occurring.

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?

Again, new windows financed through a first-lien PACE program have no different effect on the environment than new windows financed through some other mechanism. But, if FHFA truly is interested in gathering data upon which to make a decision on whether or not it is prudent to regulate PACE programs out of existence, please consider the following. Given that the building

sector consumes about 74% of the electricity used in the United States (EIA 2011a)^{xi}, ACEEE and others have found that electricity consumption can be cost-effectively reduced by about 20–30% in the next 10–15 years.^{xii} These savings would reduce annual residential and commercial building sector electricity consumption (and the environmental impacts associated with producing and consuming that electricity) by over 695 billion kWh.^{xiii} Until barriers to viable energy financing programs are removed, environmental benefits from reduced energy production and consumption cannot be realized. The more homeowners that are allowed to participate in the programs, the more environmental benefits accrue cumulatively.

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?

Yes. First-lien PACE financing will allow energy-related home improvement projects to be completed that otherwise would not be completed. The ACEEE study from September 2011, looking at multiple non-PACE programs in multiple states, noted: “Participation rates are generally low across programs. The percentage of total customers in the classes served by programs compared to the total number of program participants reveals that only two of the programs surveyed had rates that exceeded 3% of the customers targeted by the programs and more than half of the programs had participation rates below 0.5%.”

Barclays Capital noted in September 14, 2009:

We have been asked to comment on the potential market implications suggested by the Federal Housing Finance Agency (“FHFA”), et al that PACE bond liens should be pari passu or subordinate to the lien of a first mortgage lender. After careful analysis of the municipal bond market and the ratings industry, we conclude that there would be little to no meaningful bond buyer interest in pari passu or subordinated PACE liens and therefore the PACE bond market would be highly unlikely to develop.

To summarize our opinion, based on our understanding of key rating agency criteria and recent bondholder investment trends, we strongly believe that the seniority of the PACE loan lien to that of a first mortgage lender is crucial to structuring a capital markets financing acceptable to both the rating agencies and to investors and to growing the relatively new market.^{xliii}

In addition to the lack of meaningful scale of investment, other (non-PACE) financing structures examined by ACEEE suffer from the capital competition and split incentives flaws, among others, noted in response to earlier questions. Simply put, none of the other methods of financing are robust enough to create meaningful participation rates, even if they were structurally capable of attracting a significant quantity of capital. That fact has been amply demonstrated in the 18 months following the FHFA action pausing PACE. Were there other

methods of financing that work at scale, they would have emerged. The ACEEE nationwide review found that none have.

By contrast, first-lien PACE programs thrived prior to FHFA's intrusion. PACE-enabling legislation had been adopted by 27 states. Homeowners and local governments were moving forward with program implementation. Important to note is that homeowners were interested in participating in PACE senior lien programs: "Pike's survey of 669 single-family homeowners shines a nice bright LED light on where the concept of PACE financing falls into this spectrum. 75% of respondents said they would be at least 'somewhat interested' in taking advantage of PACE financing. 42% of respondents would be 'very' or 'extremely' interested, while only 11% would be 'not at all interested.'"^{xliv} The data shows that PACE programs had the potential to result in more energy improvement projects until FHFA and the GSEs actions.

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?

For PACE programs, most of the consumer lender protections listed in the responses to prior questions have evolved as a function of best practices across various state and local first-lien programs. Those protections result from several influencing factors:

- Experience gained working with lending institutions and financing entities for PACE programs
- Experience in administering local government capital finance programs
- White House Guidance on PACE program development
- DOE Guidance on PACE program development, and
- Researching the success of other programs to gain an understanding of what has worked and what has not

LEAP is designed to manage risk between the local government, the financing entity, and the property owner and has several key ways to do that in the application and review process. Applications will not be approved unless all criteria are met. LEAP includes the following eligibility criteria for applicants:

- Must be legal owner and provide proof of ownership
- Property must be located within Leon County
- Property owner must be current on property taxes, and show no delinquency in the last three years on the property
- Property owner must be current on any mortgage

- Property owner cannot be in bankruptcy nor can the property be an asset in any bankruptcy proceeding
- Property cannot be in foreclosure
- Property cannot have any federal income tax lien, judgment lien or similar involuntary lien encumbering the property
- Improvements must be reasonable for the scope of the property project and to the property value as approved by the District
- An energy savings audit (required) shall include the following: Recommendations for energy savings measures; estimated energy savings and a priority ranking for each measure; estimated renewable energy to be produced; estimated greenhouse gas reductions; and estimated cost savings resulting from the implementation of the recommendations and use of funds made available by the District
- Maximum financing limit for residential properties is \$7,000 per property unless the energy audit, or information on energy savings measures provided in the application, shows a demonstrated high level of energy savings or renewable energy produced over the duration of the financing

For LEAP, a complete application must include, among other things, the following information:

- A cost estimate for the installation of the energy savings measures completed by a Florida licensed contractor (including the name and license number of the contractor). This estimate shall include all construction costs, equipment, permitting fees, recording fees for the assessment of liens, energy audit costs, and contingency fees. Estimated costs shall be reasonable for the scope of the proposed project and in relation to the property value
- Disclosure regarding non-ad valorem assessments
- State of Florida Fair Lending Notice as required
- Proof of 30 days prior notice to any lender of any adjustment to monthly payments
- A verified copy, or other proof of notice, to any holder or loan servicer of a mortgage shall be provided to the county at least 30 days prior to entering into the written agreement (as required by Section 163.08, F.S.). This notice shall include the owner's intent to enter into the written agreement with the maximum principal amount to be financed and the maximum annual assessment necessary to repay that amount

LEAP also includes several consumer enforcement mechanisms that may not be available in other non-PACE financing alternatives, including:

- Financing Agreements have to be approved by the Leon Energy Improvement District.
- Estimated costs shall be reasonable for the scope of the proposed project and in relation to the property value.
- The required energy audit must include the estimated cost savings resulting from the implementation of the recommendations and use of funds made available by the District.

- The property owner shall provide all copies of final permits and inspections to the District upon completion of the projects.
- The property owner shall agree to provide the District 5 years of utility statements showing the energy usage for the property following the year in which the improvements are made. The statements shall be due on the final day of the month when the improvements were completed.
- The property owner shall agree to record either the written agreement or a summary memorandum of the written agreement in the County's public records within 5 days after execution of the agreement.

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?

Leon County is aware of no data indicating, and it is illogical to presume, that an energy efficiency project would cause a home's value to decline. In fact, there is much data to the contrary showing that energy efficient homes and structure command a larger value in the marketplace. See Response to Question 6. The State of Florida long has recognized the increase in property values caused by the installation of renewable energy improvements. In 1980, Florida voters included the following exemption in Article VII, section 3(d), of the Florida constitution:

By general law and subject to conditions specified therein, there may be granted an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, and for the period of time fixed by general law not to exceed ten years.

Again, during the 2008 Legislative Session, HB 7135 (ch. 2008-227, L.O.F.) was enacted, removing the expiration date of the property tax exemption, thereby allowing property owners to once again apply for the exemption, effective January 1, 2009. In the November 2008 General Election, Florida voters approved a constitutional amendment placed on the ballot by the Taxation and Budget Reform Commission adding the following language to Article VII, section 4, of the Florida Constitution:

(i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property used for residential purposes:

- (1) Any change or improvement made for the purpose of improving the property's resistance to wind damage.
- (2) The installation of a renewable energy source device.

Florida clearly understands that increases in property values stem from energy conservation improvements, and the citizens and Legislature acted to ensure that tax increases due to the value of these improvements did not act as a deterrent to promoting them. This Amendment pre-dated the passage of the State's 2010 PACE legislation by 30 years.

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?

Most PACE programs are premised on the concept that the cost of financing has to be offset by the scope and cost of the improvements over the duration of the repayment period. If that arithmetic does not result in cost savings, then the return on investment does not show that it will be a benefit to the property owner to participate in the PACE program. It is a function of the basic economics of each property owner's circumstances and the scope of the proposed improvements. LEAP requires an energy audit including: estimated energy savings and a priority ranking for each measure; estimated renewable energy to be produced; and estimated cost savings resulting from the implementation of the recommendations and use of funds made available by the District.

In LEAP, the County has minimized the financial risk to the holder of any mortgage interest because the specific types of information in the audit are prescribed to assure the estimated utility savings are known and the return on investment is fully disclosed to the applicant. Additionally, LEAP includes "back end" monitoring of 5 years of utility statements showing the energy usage for the property following the year in which the improvements are made. This allows the County to assess the efficacy of the audit requirements and make changes as needed.

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?

This question appears to be directed at renewable energy or more complex improvements (as opposed to insulation, HVAC upgrades, energy efficient windows, etc.) that are more related to commercial properties. Due to the nature of LEAP specifically, participants are not likely to have additional costs beyond the cost of the PACE obligation due to the maximum financing limit of \$7,000 per residential property. Other protections include requiring the improvements to be reasonable and that the repayment duration achieves a return on investment to offset

the costs of repayment. Several PACE programs provide education in the application process, direct contact with educating homeowners during the auditing process, etc.

Maintaining energy efficient improvements to meet cost savings performance is a necessity of any type of financing strategy, but windows and insulation need little maintenance, and changing filters in HVAC systems is required no matter how energy efficient they are or how they are financed.

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 addressed above, PACE programs add value and reduce energy costs. Further, research shows that a majority of Americans are searching for greener products^{xlv} and that Energy Star certification of a home would somewhat or very much so influence their decision to buy it, assuming price, size and location were the same. *Id.* Other studies^{xlvi} show that homeowners

can profit by investing in energy efficient homes even if they are uncertain about how long they might stay in the home. If their reduction in monthly fuel bills exceeds the after-tax mortgage interest paid to finance energy efficiency investments, then they will enjoy positive cash flow for as long as they live in their home and can also expect to recover their investment in energy efficiency when they sell their home.

This research has significant implications for home appraisers, mortgage lenders, and housing assistance programs at the federal, state, and local levels. Given that the appraisal process already must capture the effect of special assessments on property values and the trend is increasing to educate appraisers and lenders about how to factor energy efficiency improvements into a home's value, property owners should have ample tools to determine the premium they will place on the value of an energy efficient home and if that value is offset by the existence of a special assessment.

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?

See response to Question 9.

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?

See responses to prior questions for LEAP program requirements for applicant eligibility and project approval. Various data sources used to determine if a property, project and owner are eligible for financing have been part of standard industry practice for decades, including search of the public record, credit service review of debt and taxes, etc.

Additionally, there are a multitude of tools and procedures that PACE programs rely upon to assure a particular project is appropriate for financing. Some programs publish extensive lists of projects that can be financed.^{xlvii} Section 163.08, Florida Statutes, Florida's state law related to "Qualifying Improvement" or PACE programs, defines energy efficiency and renewable energy projects. The DOE has established and reviewed tools and methodologies for determining the cost effectiveness of energy efficiency and renewable energy systems. Building rating systems are widely known, with some of them already incorporated into state laws relating to both efficiency and renewables. Accordingly, state and local governments have a number of validated metrics and tools from which to choose as they select implementation strategies for approval criteria such as those summarized above. Such tools include, but are not limited to:

- EPA's Portfolio Manager to determine building energy efficiencies and track/monitor energy savings,^{xlviii}
- Various other software and energy code modeling tools are listed on the National Renewable Energy Laboratory's website (10 total are listed). These energy analysis tools include energy analysis software used for both residential and commercial energy performance simulation.^{xlix}
- Estimator calculators for savings and repayment estimates.^l

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?

PACE generally is based on the history and value of the asset (as well as energy savings increasing property owner's ability to repay). Creating net positive cash flow for the property is generally a fundamental premise of PACE in the application and review process (gleaned from the audit). The analysis is twofold: 1) look at applicant's history of payments related to debt and in particular their property; and 2) control the amount of financing the property owner is

undertaking to assure positive cash flow. LEAP manages this analysis of homeowner cash flow and income with the following requirements:

- Property owner must be current on property taxes, and show no delinquency in the last three years on the property
- Property owner must be current on any mortgage
- Property owner cannot be in bankruptcy nor can the property be an asset in any bankruptcy proceeding
- Property cannot be in foreclosure
- Property cannot have any federal income tax lien, judgment lien or similar involuntary lien encumbering the property

Additionally, LEAP controls the amount of financing the property owner can receive to build upon the goal of getting the property owner a positive cash flow:

- Improvements must be reasonable for the scope of the property project and to the property value as approved by the District
- Maximum financing limit for residential properties is \$7,000 per property unless the energy audit, or information on energy savings measures provided in the application, shows a demonstrated high level of energy savings or renewable energy produced over the duration of the financing

The ability of these criteria to capture the income and cash flow analysis posed by the question is reflected in the low default rate on PACE programs (See response to Question 2). These are also the types of protections prescribed in the DOE Guidance (See response to Question 1).

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?

Any alternative short of a complete prohibition on purchases of mortgages in PACE first-lien jurisdictions will have more positive environmental effects than FHFA's existing statements. The information provided in the responses above addresses perceived financial risk and the tools available to mitigate that perceived risk. Specific alternatives to FHFA's statements include withdrawing the statements in their entirety and allowing the PACE senior lien programs to continue. In the alternative, any uniform rule should account for the individual program goals and only be based upon the White House and DOE best practices that have already developed and are described herein.

¹ The Policy Framework for PACE Financing Programs
http://www.whitehouse.gov/assets/documents/PACE_Principles.pdf.

ⁱⁱ DEP'T OF ENERGY, GUIDELINES FOR PILOT PACE FINANCING PROGRAMS 1 (2010),
http://www1.eere.energy.gov/wip/pdfs/arra_guidelines_for_pilot_pace_programs.pdf

ⁱⁱⁱ The National Resources Defense Council, PACE Now, Renewable Funding, LLC, and The Vote Solar Initiative. "PACE Programs White Paper: Helping Achieve Environmental Sustainability and Energy Independence, Improving Homeowner Cash Flow and Credit Profile, Protecting Mortgage Lenders and Creating Jobs", May 3, 2010.

<http://pacenow.org/documents/PACE%20White%20Paper%20May%203%20update.pdf>

DEP'T OF ENERGY, GUIDELINES FOR PILOT PACE FINANCING PROGRAMS 1 (2010), available at:
http://www1.eere.energy.gov/wip/pdfs/arra_guidelines_for_pilot_pace_programs.pdf

^{iv} The DOE suggested that local governments approve only cost-effective projects with assessment values of ten percent or less of the property's value and an assessment term shorter than the estimated useful life of the home improvement being installed. *Supra*, note ii.

^v Jeanne Roberts, "ACEEE Study Shows Energy Efficiency Financing Programs Are Low Risk," September 28, 2011. <http://www.energyboom.com/efficiency/aceee-study-shows-energy-efficiency-financing-programs-are-low-risk>

^{vi} Matthew H. Brown and Beth Conover. "Recent Innovations in Financing for Clean Energy," October 2009.
[http://www.swenergy.org/publications/documents/Recent Innovations in Financing for Clean Energy.pdf](http://www.swenergy.org/publications/documents/Recent%20Innovations%20in%20Financing%20for%20Clean%20Energy.pdf)

^{vii} FHA's "Energy Efficient Mortgage (EEM) Fact Sheet"
http://www.energystar.gov/ia/partners/bldrs_lenders_raters/EEM_Fact_Sheet.pdf

^{viii} FDIC. "Interagency Appraisal and Evaluation Guidelines."
http://www.fdic.gov/regulations/laws/rules/5000-4800.html#Monitoring_Collateral_Values

^{ix} Fannie Mae, "Energy Improvement Feature," December, 2010.
<https://www.efanniemae.com/sf/mortgageproducts/pdf/eifeaturefacts.pdf>

^x Loan security through a tax lien enables beneficial terms (6-8% interest, long repayment periods – average 10-20 yrs.). "Energy Efficiency Financing Models and Strategies."
http://www.cap-e.com/Capital-E/Capital-E_files/Energy%20Efficiency%20Financing%20-%20Models%20and%20Strategies.pdf

^{xi} Wells Fargo, "Home Equity Rate and Payment Options."
https://www.wellsfargo.com/equity/tools/rate_calc_results.content?sourcepage=rpcresults&skin=fullpage&pagetype=output

^{xii} FHA, "FHA's Energy Efficient Mortgage (EEM) Fact Sheet."
http://www.energystar.gov/ia/partners/bldrs_lenders_raters/EEM_Fact_Sheet.pdf

^{xiii} U.S. Energy Information Administration, AEO2012 Early Release Overview,
http://www.eia.gov/forecasts/aeo/er/early_prices.cfm

^{xiv} HUD, "Energy Efficient Mortgage Home Owner Guide."
http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/eem/eemhog96

^{xv} "Energy Efficiency Financing in California, Needs and Gaps, Preliminary Assessment and Recommendations," Presented to The California Public Utilities Commission, Energy Division.
<http://docs.cpuc.ca.gov/efile/RULINGS/157049.pdf>

^{xvi} Increasing Middle America's Access to Capital for Energy Improvements, Lawrence Berkeley National Laboratory, March 6, 2012. <http://eetd.lbl.gov/ea/ems/reports/mi-policybrief-3-6-2012.pdf>

^{xvii} *Supra* note xviii.

^{xviii} “The existing unsecured products (serving smaller projects <\$15,000) typically have very high interest rates, partly because they have not achieved volume that would increase economies of scale and secondary market investors. Unsecured energy loans typically have unsubsidized interest rates that range from 12% to 18%. The rates are high mainly because the loans are small. Also, these loans have not been available in sufficient quantities to warrant securitization in the secondary market, which could reduce rates somewhat. For instance, the Fannie Mae program purchases less than 1,000 loans per month nationwide; this is not enough to achieve economies of scale or to attract investors.” *Supra* note xviii.

^{xix} *Supra* note xviii.

^{xx} Community Development Interoffice Memorandum, “Update Regarding Possibility of Doña Ana County Solar District”, City of Las Cruces, July 8, 2010.

^{xxi} Renew Missouri, “Advancing Efficiency and Renewable Energy & Commercial/Industrial/Agricultural PACE Program Best Practices,” February 2011.
<http://pacenow.org/blog/wp-content/uploads/PACE-Best-Practices-Implementing-PACE-in-Missouri-Final.pdf>

^{xxii} Mark Zimring and Merrian Fuller, “Accelerating the Payment of PACE Assessments,” May 4, 2010.
http://eetd.lbl.gov/ea/ems/reports/ee-policybrief_050410.pdf

^{xxiii} Jonathan R. Sichtermann, “Slowing the PACE of Recovery: Why Property Assessed Clean Energy Programs Risk Repeating the Mistakes of the Recent Foreclosure Crisis,” 46 Val. U. L. Rev. 263 (2011).
Available at: <http://scholar.valpo.edu/vulr/vol46/iss1/8>

^{xxiv} Alliance to Save Energy “The Inception of PACE Financing, its Support, and its Potential.”
<http://ase.org/resources/inception-pace-financing-its-support-and-its-potential>

^{xxv} Evan Dick. “Nationally Stalled PACE Program Moves Forward in Vermont,” July 22, 2011.
<http://greensource.construction.com/news/2011/07/072211-PAE-Program.asp>

^{xxvi} DOE, “State and Municipal Revolving Loan Funds.”
<http://www1.eere.energy.gov/wip/solutioncenter/financialproducts/revolvingloanfunds.html>

^{xxvii} S. Booth, E. Doris, D. Knutson, and S. Regenthal, “Using Revolving Loan Funds to Finance Energy Savings Performance Contracts in State and Local Agency Applications,” July 2011.
http://www.nrel.gov/applying_technologies/state_local_activities/pdfs/51399.pdf

^{xxviii} A Revolving Loan Fund is an effective tool for residential energy efficiency improvements in the \$2,000 to \$10,000 range that are too expensive for a cash/credit purchase but do not warrant taking out a second mortgage or equity line. *Supra* note xxix.

^{xxix} Bell, Catherine, Steven Nadel and Sara Hayes, “On-Bill Financing for Energy Efficiency Improvements: A Review of Current Program Challenges, Opportunities and Best Practices” December 2011, Report Number E118.

^{xxx} DOE, “On-Bill Repayment Programs.”
<http://www1.eere.energy.gov/wip/solutioncenter/financialproducts/OnbillRepayment.html>

^{xxxi} *Supra* note xxxiii.

^{xxxii} *Supra* note xxxii.

^{xxxiii} FHA PowerSaver Pilot Program.

<http://portal.hud.gov/hudportal/documents/huddoc?id=FHAPowerSaverFactSheet.pdf>

^{xxxiv} The VA allows VA borrowers to borrow additional funds to install Energy Efficient Upgrades to the home simultaneously when purchasing a new home with a VA Loan or Refinancing an existing loan.

http://onlinevaservices.com/va_energy_efficiency_upgrade.html

^{xxxv} California Association of Realtors, September 2011.

<http://www.car.org/meetings/carmeetings/committee-materials-archive/2011fall/580067/paceibp/?view=Print&url=http://www.car.org/meetings/carmeetings/committee-materials-archive/2011fall/580067/paceibp/>

^{xxxvi} See Property-Assessed Clean Energy (PACE) Programs, U.S. DEP'T ENERGY, <http://www1.eere.energy.gov/wip/solutioncenter/PrintableVersion/financialproducts/pace.html>. Ethan N. Elkind Et Al., Saving Energy: How California Can Launch a Statewide Retrofit Program for Existing Residences and Small Businesses 14 (May 2010), available at [http://www.law.berkeley.edu/files/Saving_Energy_May_2010\(1\).pdf](http://www.law.berkeley.edu/files/Saving_Energy_May_2010(1).pdf); see also Mark Zimring & Merrian Fuller, Clean Energy Financing Policy Brief: Accelerating the Payment of PACE Assessments 3 (May 4, 2010), available at http://eetd.lbl.gov/ea/ems/reports/ee-policybrief_050410.pdf.

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^{xxxviii} Rick Nevin, Christopher Bender, and Heather Gazan "More Evidence of Rational Market Values for Home Energy Efficiency," *The Appraisal Journal*. October 1999.

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