ROCKVILLE, MARYLAND

March 26, 2012

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

Dear Mr. Pollard:

Montgomery County, Maryland is pleased to submit the following comments in response to the Advance Notice of Proposed Rulemaking (ANPR) issued by the Federal Housing Finance Agency (FHFA) on January 26, 2012 related to Property Assessed Clean Energy (PACE) programs. Montgomery County is a supporter of PACE. We urge FHFA to give due consideration to the comments of PACE proponents that view these programs as a key tool in reducing residential energy use, which helps communities address local environmental issues, meet ambitious greenhouse gas reduction goals, and reduce the energy costs of homeowners.

Montgomery County adopted a PACE program known as the Home Energy Loan Program (HELP) in 2009. Implementing regulations were being developed when FHFA issued the July 6, 2010 statement that PACE programs "present significant safety and soundness concerns that must be addressed by Fannie Mae, Freddie Mac and the Federal Home Loan Banks." Consequently, the program was never launched and no loans were issued.

FHFA seeks to answer a number of questions in the ANPR. Montgomery County's comments address two key areas:

Financial Risk to Lenders and Protections to Borrowers

Foreclosed properties are a significant concern to local governments. Foreclosures reduce property values, resulting in lower tax revenues. Properties vacated as a result of foreclosure can contribute to neighborhood decline, and may result in an additional burden to police and housing agencies. As a result, Montgomery County and other governmental entities that would implement PACE programs have the same interests as FHFA in protecting lenders and homeowners from defaults. For this reason, the regulations that were drafted to implement HELP included a number of measures designed to address these concerns, including:

- The applicant must be the owner of record of the property.
- All real property taxes due and owing on the property must be paid in full. Any property that is in tax sale or has liens against the property, other than mortgage liens, would not be eligible for a HELP loan.

- An applicant must not have any outstanding debts owed to the County or the State of Maryland. In addition, an applicant must be current on any mortgage or deed of trust debt on the property. The applicant must not be in bankruptcy.
- An applicant must have paid all real property taxes on the property on time for the previous three years. If the applicant has owned the property for less than three years, the applicant must be up to date on all real property taxes and must not have defaulted on taxes for any real property owned in the County in the three years prior to the application.
- A property must have sufficient equity, based on the assessed value, to cover the amount of a HELP loan, less any mortgage or deed of trust liens against the property. The PACE assessment must be less than 5% of the houses assessed value up to a maximum of $25,000.
- Only improvements that are "cost effective" could be financed. Cost effectiveness would be determined by an energy auditor certified under the U.S. Environmental Protection Agency's *Home Performance with Energy Star* program or its equivalent.
- Energy auditors must provide information to the prospective borrower clearly showing the projected annual energy savings of efficiency measures as compared to the annual principal and interest that would result from financing the measure. Annual energy savings calculations must be based on widely accepted projections of future energy costs, such as those published by the U.S. Department of Energy.
- Auditors must identify any additional public or private financing mechanism that can be used to implement energy efficiency improvements or renewable energy measures (e.g., property tax credits, federal tax credits, and utility incentives) to help reduce the amount that needs to be financed through the program.
- Borrowers must certify that they have reviewed existing loan agreements applicable to the property, and verified that entering into a HELP loan and consenting to an assessment levied against the property will not constitute a default under any existing security instrument.
- PACE assessments would be clearly listed on the County's property tax records, in the same manner other local assessments and taxes are listed, accessible to all mortgage lenders (as well as the general public).
- In the unfortunate circumstance of default, only the assessment payments that are missed plus small local penalties would be levied. The remaining balance of the assessment would be resumed under the next owner.

<u>PACE Compared to Other Options for Home Improvement Financing</u>

FHFA asks a number of questions related to the need for PACE programs given other "market options for financing home improvement projects relating to energy efficiency." Among the questions raised by FHFA are:

- What alternatives to first lien PACE loans are available for financing home-improvement projects relating to energy efficiency, and what are the terms for these alternatives?
- What are the relative advantages and disadvantages of each, from the perspective of the current and any future homeowner-borrower, the holder of an interest in any mortgage on the subject property, and the environment?
- How do improvements financed via the different alternatives affect the value of the underlying property?

- How do improvements financed via the different alternatives compare in terms of their effect on the environment?
- Do first-lien PACE programs result in 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?

These are legitimate questions. Unfortunately, it is not possible to answer them definitively because of the multitude of factors that determine which option is appropriate in a given situation. The source of program funding, the characteristics of the administrating entity, the nature of the improvement being implemented, and a variety of factors about the borrower are just a few of the factors that determine which approach is best. Regardless of the approach, reasonable program parameters must be put in place to protect the provider of the funding as well as the funding recipient. As an entity that has managed a variety of different options for encouraging residential energy efficiency improvements, Montgomery County is seeking the flexibility to adopt the best program at any given time. Rather than allow jurisdictions to offer PACE programs under reasonable standards like those outlined above, FHFA's current rigid prohibition closes the door on a potential option that may be the best choice for certain homeowners.

Montgomery County appreciates the opportunity to comment on this ANPR. We would welcome the opportunity to engage in more in-depth discussion of this issue, and share the perspective of a local government trying to achieve an important economic and environmental objective on behalf of its residents.

Please contact Eric Coffman for further information on these comments, or on the activities of Montgomery County related to PACE. Mr. Coffman can be reached at 240-777-7754 or via email at eric.coffman@montgomerycountymd.gov.

Sincerely,

Isiah Leggett
County Executive

Roger Berliner
Council President