

March 23, 2012

Mr. Alfred Pollard, General Counsel  
Federal Housing Finance Agency  
400 Seventh Street, SW, Eighth Floor  
Washington, DC 20024  
RE: Comments RIN 2590-AA53

Dear Mr. Pollard:

On behalf of Renewable Funding, LLC, I respectfully submit these comments in response to FHFA's January 26, 2012 Advanced Notice of Public Rulemaking regarding Property Assessed Clean Energy (PACE).

## **I. Introduction**

PACE is a powerful programmatic and financing tool with demonstrated success driving demand for energy efficiency and renewable energy projects in buildings. PACE is uniquely attractive as a financing tool because it solves the two big problems that have prevented wide scale adoption of energy efficiency and renewable energy retrofit projects:

- **Upfront Cost:** PACE financing eliminates the high upfront cost of energy efficiency and renewable energy upgrades and provides attractive long-term financing that makes projects cost effective much sooner.
- **Transfer on Sale:** Because the average homeowner moves every 5-7 years, many are reluctant to invest in large energy upgrades unless they are certain they will remain in their home. Because PACE, like other municipal assessments, stays with the property upon sale, the new owner will assume the assessment payments if the property is sold.

In spite of significant investments by the Federal, state and local governments and the energy efficiency industry, the vast majority of the home energy retrofit market remains unserved. In its September 2011 report on Energy Efficiency Financing programs, for example, the American Council for an Energy Efficient Economy found that “most [loan] programs are not penetrating the market of potential consumers.”<sup>1</sup> The ACEEE report notes that more than half of the programs studied had a participation rate of less than .5% of potential customers. PACE helps solve the problems that have prevented other energy efficiency financing programs from succeeding. PACE also helps achieve important state and local government energy policy goals that may include:

- Job creation and economic development without federal, state, or local government taxes and subsidies;
- Energy independence from foreign sources;
- Energy security for states by limiting reliance on inter-state energy transfers and strain on distribution systems;
- Avoided costs of building new power plants;
- Lower demand on the energy grid; and
- Environmental protection from reduced burning of fossil fuels.

## **II. PACE Assessments are Valid**

In its July 6, 2010 statement on PACE, FHFA refers to PACE assessments as loans, and questions their validity: “...PACE loans are unlike routine tax assessments” ...because “the size and duration of PACE loans exceed typical local tax programs and do not have the traditional community benefits associated with taxing initiatives.”<sup>2</sup> For the many reasons outlined below, PACE assessments are valid property tax assessments, not loans; PACE districts are similar to other special assessment districts.

**A. State and Local Government Authority:** The creation and administration of special assessment districts is the purview of state and local government. Elected

legislators in 27 states and the District of Columbia have passed valid laws giving local governments the right to create PACE benefit districts to finance energy efficiency, renewable energy and water efficiency projects that achieve public objectives. These laws make clear the public benefits associated with PACE assessment districts. To give just one example, the “Findings and Purpose” section of New Hampshire HB 1554, which became law on June 28, 2010, states:

*“I. Energy conservation and efficiency and clean energy improvements to residential, commercial, industrial, and other buildings and facilities are necessary to:*

*(a) Protect the economic and social well-being of New Hampshire communities by reducing the cost of fuel oil, electricity, natural gas, propane, and other forms of energy, and the risks associated with future escalation in energy prices;*

*(b) Protect the economic and social well-being of New Hampshire communities by encouraging investment in the development and implementation of energy conservation and efficiency and clean energy improvements; and*

*(c) Address the threat of global climate change.*

*II. The upfront cost of energy conservation and efficiency and clean energy improvements prevents many property owners from making such improvements.*

*III. To achieve the public benefits of reducing the cost of energy use and the risks associated with future escalation in energy prices, encouraging investment in the development and implementation of energy conservation and efficiency and clean energy improvements, and addressing the threat of global climate change, it is necessary to authorize a procedure for enabling property owners, on a voluntary basis, to finance such improvements and make repayments in the form of special assessments on their property tax bills or municipal service bills.*

*IV. The purposes of this chapter are to authorize municipalities to establish such a procedure and to set forth requirements to ensure that its use will achieve the intended purposes of improving the social and economic well-being of New Hampshire communities and reducing*

*greenhouse gas emissions.”<sup>3</sup>*

**B. Duration:** Contrary to FHFA’s assertions, many assessments for public projects extend for 20 years or more, as this example from Grand Forks North Dakota illustrates:

*“The special assessment process is a means of financing certain public improvements and services by imposing a calculated amount of cost against a benefiting property. This distinguishes it from improvements which are paid for out of general revenues or through general obligation bonds.*

*More often than not, special assessment projects are capital in nature and enhance the utility, accessibility, or aesthetic value of the affected properties...*

*The annual assessments must be certified to the County Auditor by November 1st of each year. Length of payments are determined according to the type of project. (These may vary based on project size.)*

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- *Water Lines -- 15 to 20 years*
- *Sanitary Sewer Lines -- 15 years*
- *Street Projects (Paving/Asphalt) -- 10 to 20 years*
- *Street Projects (Gravel) -- 5 to 10 years*
- *Lighting Projects -- 10 years*
- *Sidewalks -- 5 years*
- *Flood Control Projects -- 15 years*
- *Storm Sewer Projects -- 15 to 20 years”<sup>4</sup>*

**C. Centuries of Legal Precedent:** Special assessments have been used in the United States dating as far back as a 1691 levy for street and drain construction in New York City.<sup>5</sup> The longstanding tradition of using land-secured financing to support municipal programs has been consistently upheld by courts.<sup>6</sup>

**D. Voluntary:** Again, contrary to FHFA’s assertions, many other benefit assessment districts are voluntary. According to the Florida Department of Economic Opportunity, Benjamin Franklin established a voluntary fire protection assessment district in Philadelphia as early as 1736.<sup>7</sup> More recent examples include

voluntary programs for septic upgrades in Virginia<sup>8</sup> and seismic strengthening for homes in California.<sup>9</sup> In addition, there are tens of thousands of benefit districts established voluntarily by homeowners who vote to finance projects with assessments for things like water and sewer systems, parks, and open land acquisitions.

**E. PACE Districts Validated:** State courts in California<sup>10</sup> and Florida<sup>11</sup> have already upheld the validity of PACE assessments.

**F. Commonly Used:** Local governments use special assessment districts to finance many types of community improvements that serve a public purpose. As of 2007, there were more than 37,000 special assessment districts in the United States.<sup>12</sup> Contrary to FHFA assertions, many of these assessments are as large or larger than the average \$15,000-\$30,000 PACE assessment.

### **III. PACE Assessments Present Minimal Risk**

PACE poses minimal risk to homeowners, local governments and mortgage lenders for many reasons. Although there are not yet national requirements that local PACE programs must follow, there have been three separate Federal government efforts to develop national standards to guide state and local governments in the establishment of PACE districts: White House Policy Framework for PACE Financing Programs (October 18, 2009)<sup>13</sup>; U.S. Department of Energy Guidelines for Pilot PACE Financing Programs (May 7, 2010)<sup>14</sup> and HR 2599 (Hayworth-NY19)<sup>15</sup>. It is important to note that while FHFA criticizes the lack of nationally uniform PACE standards, the agency has repeatedly refused to engage in constructive discussion of such standards.

Although PACE districts are similar in many respects to other special assessment districts, Federal PACE guidelines have been far more exacting than for other districts. To quote the DOE document: “These best practice guidelines are significantly more rigorous than the underwriting standards currently applied to

land-secured financing districts.”<sup>16</sup> HR 2599 takes the standards several steps further and contains underwriting standards that are significantly more rigorous than the DOE PACE Guidelines.

Indeed, the pioneering local governments that created PACE programs have experienced very few defaults, in spite of the fact that the assessments were placed during the economically challenging period of 2008-10:

Program	Assessments	Defaults	Default Rate
Babylon, NY	652	1	.15%
Boulder County, CO	612	7	1.14%
Sonoma County, CA	1459	16	1.10%
Total	2,723	24	.88%

FHFA asserted that PACE poses “significant safety and soundness concerns.” The data from these programs simply do not support FHFA’s claim. It is incumbent upon FHFA to conduct any necessary analysis to support its claim.

There are many ways that PACE assessments limit risk to homeowners, local governments and mortgage lenders:

**A. PACE Improvements Serve as Hedge Against Rising Energy Costs:**

Energy efficiency and renewable energy projects create a fixed hedge against rising fuel costs, price spikes, or extraordinary demands for energy that endanger a homeowner’s ability to make mortgage payments. The importance of this hedge is obvious given the fact that 2010 was the fifth consecutive yearly increase above the inflation rate, in which the average American household paid a record \$1,419 for electricity.<sup>17</sup>

**B. PACE Improvements Increase Home Value:** In the event of a default, the best protection for mortgage lenders is an increase in the value of the home following energy efficiency or renewable energy upgrades. Numerous studies show that energy efficiency and renewable energy improvements increase a home's value:

- An April 2011 study of 72,000 homes by the Lawrence Berkeley National Laboratory, for example, showed an average \$17,000 sales price premium for homes with solar PV systems.<sup>18</sup>
- Another 2011 study published in the Journal of Sustainable Real Estate of homes with Energy Star ratings showed purchase prices to be nearly \$9.00 higher per square foot for energy efficient homes.<sup>19</sup>
- These recent studies confirmed the results of numerous earlier studies showing that residential selling prices are positively correlated with lower energy bills, most often attributed to energy efficiency improvements.<sup>20</sup>

Additionally, HR 2599 contains many other standards that limit risk, including:

**Non-Acceleration:** Future, unpaid PACE assessments remain with a property upon sale or other transfer to a new owner, protecting lenders from total extinguishment of unsecured debt or home equity lines in defaults when a home is worth less than its outstanding mortgage balance.

**15% Equity Test:** In order to qualify for PACE financing, homeowners must have at least 15% equity in their home.

**Projects Limited to 10% of Home Value:** PACE-financed projects cannot exceed 10% of home value.

**Cost Effective:** Projects must pay for themselves by having a savings-to-investment ratio greater than one.

**Required Energy Assessment:** In order to qualify for PACE financing, homeowners must first obtain an energy assessment by an accredited, qualified contractor.

**Rigorous Underwriting Qualifications:** PACE financing is only available to property owners for whom all of the following are true: All property taxes and other public assessments are current and have been current for 3 years or the property owner's period of ownership, whichever is shorter; there are no involuntary liens, such as mechanics liens, on the property in excess of \$1,000; there are no recorded notices of default and not more than one instance of property-based debt delinquency in the past 3 years; the property owner has not filed for or declared bankruptcy in the previous 7 years; the property owner is current on all mortgage debt.

#### **IV. PACE Creates Huge Economic and Tax Benefits**

Any realistic assessment of PACE should consider its benefits as well as its risks. Even in their brief history, PACE programs have demonstrated that they can drive demand for energy projects that result in significant economic activity, tax revenue and job creation. Prior to the FHFA July 6, 2010 letter, the PACE program in Sonoma County, California, was experiencing very strong demand – and had completed projects on nearly 1% of the county's owner-occupied housing market.

According to a 2011 study by the Department of Energy, the Boulder County, Colorado 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.<sup>21</sup>

A national study conducted by Portland-based economics consulting firm EcoNorthwest concluded that if \$1 million were spent on PACE improvements in each of four American cities, it would generate \$10 million in gross economic output; \$1 million in combined Federal, state and local tax revenue; and 60 jobs.<sup>22</sup> A simple extrapolation from this study shows that if just 1% of America's 75 million homeowners completed a typical PACE project, it would create more than 226,000 jobs, generate more than \$4 billion in Federal, state and local tax revenue and stimulate more than \$42 billion in new economic activity.

## **V. Recommended Rule**

Renewable Funding recommends that FHFA adopt a rule stipulating that Fannie Mae, Freddie Mac, and any other mortgage lenders regulated by FHFA be allowed to buy residential mortgages with PACE assessments that are originated by programs that conform to the standards and guidelines similar to 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).

Sincerely,

Cisco DeVries  
President and CEO  
Renewable Funding, LLC

## Notes

1. <http://aceee.org/research-report/u115>
2. <http://www.fhfa.gov/webfiles/15884/PACESTMT7610.pdf>
3. <http://www.gencourt.state.nh.us/legislation/2010/HB1554.html>
4. <http://www.grandforksgov.com/gfgov/home.nsf/Pages/Special+Assessments>  
Special assessment repayment schedules are 20-30 years and longer in many states. For example, see also:  
<http://www.californiataxdata.com/pdf/AssessmentDistrict.pdf>
5. <http://ceres.ca.gov/planning/financing/chap3.html>
6. See, for example, *Hagar v. Reclamation District No. 108*, 111 U.S. 701, 704 (1884): "It is not open to doubt that it is in the power of the State to require local improvements to be made which are essential to the health and prosperity of any community within its borders." (providing for the construction of canals and levees, to be paid for by assessments on benefitted property.) See also *Isaac v. City of Los Angeles*, 66 Cal.App.4th 586, 596 (1998): "[A] special assessment is . . . a benefit to specific property that is financed through the public credit."
7. <http://www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/special-district-information-program/florida-special-district-handbook-online/introduction-to-special-districts>
8. <http://www.chesterfield.gov/utilities/>
9. In 1979, California adopted the Geologic Hazard Abatement District law (California Public Resources Code Sections 26500-26654). The purpose of the law is to allow cities and counties to form special districts that are equipped to address geologic hazards and related concerns. Today, California contains approximately 40 geologic hazard abatement districts.
10. [http://www.sonoma-county.org/board/meetings/meeting\\_20091027/meeting\\_20091027\\_item\\_32.pdf](http://www.sonoma-county.org/board/meetings/meeting_20091027/meeting_20091027_item_32.pdf)
11. <http://www.floridapace.gov/about/judgment>
12. <http://www.census.gov/govs/cog/GovOrgTab03ss.html>
13. [http://www.whitehouse.gov/assets/documents/PACE\\_Principles.pdf](http://www.whitehouse.gov/assets/documents/PACE_Principles.pdf)
14. [http://www1.eere.energy.gov/wip/pdfs/arra\\_guidelines\\_for\\_pilot\\_pace\\_programs.pdf](http://www1.eere.energy.gov/wip/pdfs/arra_guidelines_for_pilot_pace_programs.pdf)
15. <http://thomas.loc.gov/cgi-bin/query/z?c112:H.R.2599>:
16. [http://www1.eere.energy.gov/wip/pdfs/arra\\_guidelines\\_for\\_pilot\\_pace\\_programs.pdf](http://www1.eere.energy.gov/wip/pdfs/arra_guidelines_for_pilot_pace_programs.pdf)
17. <http://www.usatoday.com/money/industries/energy/story/2011-12-13/electric-bills/51840042/1>
18. <http://eetd.lbl.gov/ea/emp/reports/lbnl-4476e.pdf>
19. <http://www.costar.com/JOSRE/archives.aspx>
20. See, for example: Dinan, T. M. and Miranowski, J. A. (1989) Estimating the Implicit Price of Energy Efficiency Improvements in the Residential Housing Market:

A Hedonic Approach. *Journal of Urban Economics*. 25(1): 52-67. Longstreth, M., Coveney, A. R. and Bowers, J. S. (1984) Conservation Characteristics among Determinants of Residential Property Value. *Journal of Consumer Research*. 11(1): 564-571. Laquatra, J. (1986) Housing Market Capitalization of Thermal Integrity. *Energy Economics*. 8(3): 134-138. Johnson, R. C. and Kaserman, D. L. (1983) Housing Market Capitalization of Energy-Saving Durable Good Investments. *Economic Inquiry*. 21: 374 - 386. Nevin, R. and Watson, G. (1998) Evidence of Rational Market Values for Home Energy Efficiency. *The Appraisal Journal*. 68: 401-409. Nevin, R., Bender, C. and Gazan, H. (1999) More Evidence of Rational Market Values for Energy Efficiency. *The Appraisal Journal*. 67(4): 454-460.

21. [www.nrel.gov/docs/fy11osti/52231.pdf](http://www.nrel.gov/docs/fy11osti/52231.pdf)

22. <http://pacenow.org/blog/wp-content/uploads/PACE-Econometric-Study-by-ECONorthwest-for-PACENow-5-4-11.pdf>