



The Jordan Institute
49 North Main St.
Concord, NH 03301

March 18, 2010

Mr. Alfred Pollard
General Counsel
Federal Housing Finance Agency
400 7th St., N.W.
Washington, DC 20024
RE: Re: RIN 2590-AA53 / FHFA 12 CFR Part 1254 / Mortgage Assets Affected by PACE Programs

Dear Mr. Pollard:

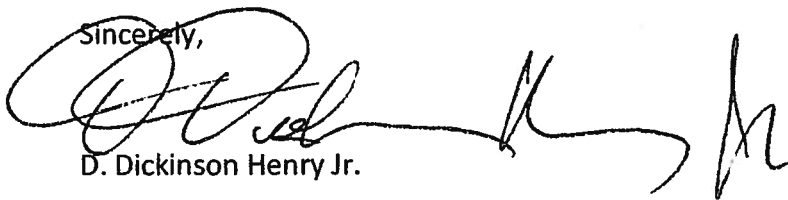
The Jordan Institute respectfully submits its comments below as requested in your *Advanced Notice of Proposed Rulemaking* directive. The Jordan Institute is a New Hampshire non-profit dedicated to helping mitigate the effects of climate change through the establishment and enactment of policies, helping clients with the funding of their energy efficiency initiatives, and oversight of project implementation. More specifically, we design and administer innovative programs that help building owners of commercial, industrial, and residential buildings carry out energy-saving upgrades. We act as an owner-representative and help consumers and businesses determine eligible financing, provide technical assistance and look at individual cost-benefit scenarios for multiple projects encompassing commercial, industrial and residential markets. To date we have instituted over 30 implementation projects in the past three years and performed well over 200 level one audits and 60 level two audits.

As Executive Director, I can personally attest to the need for innovative financing programs in New Hampshire and Jordan wrote and helped to pass the initial PACE legislation for New Hampshire. In addition to overseeing the activities at the Jordan Institute I serve on many energy related boards and working groups in the state. As the principle author of the PACE legislation, I can verify that we included many safeguards for mortgage backed holders and thoroughly looked at all the ramifications of this legislation. Many barriers still exist to implementing broad scale energy saving retrofits. Additionally, the industry as a whole must overcome the misperception that retrofits are not economically viable. Unlike other states that

Comments by D. Dickinson Henry, Jr. Executive Director on behalf of The Jordan Institute, Inc.

have better sources of solar and wind, New Hampshire's best resource for reducing our energy consumption lies not in adding a specific renewable energy technology, but in replacing our heating oil and making all buildings energy efficient. We have overseen many commercial projects that have achieved thermal savings of well over 50% leading to significant reductions in carbon emissions. We need a strong residential PACE program to enable similar reductions on the residential side. Conservation and efficiency linked with renewable solutions such as biomass, solar thermal, and various types of heat pumps are by far and away the cheapest method to reduce carbon emissions, to create jobs, and to strengthen our local economies by redirecting petro dollars back into the state of New Hampshire. We appreciate the opportunity to comment and look forward to FHFA's endorsement and promotion of a residential PACE programs throughout the country.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Dickinson Henry Jr.", written over a horizontal line.

D. Dickinson Henry Jr.

Executive Director



Comment 3/26/2012

Comment Respondee: The Jordan Institute, Concord, NH

Re: RIN 2590-AA53 / FHFA 12 CFR Part 1254 / Mortgage Assets Affected by PACE Programs

Section 1. General Comments: The Jordan Institute believes it is essential that states and local communities proceed with the implementation of residential and commercial PACE programs. Many communities in New Hampshire were geared up and ready to implement PACE when FHFA essentially stopped our residential program with its blanket directive. **In New Hampshire's enabling legislation, many provisions were incorporated to protect mortgage holders, sponsoring communities and the overall integrity of the program.** Of course, New Hampshire has since, (potentially unnecessarily) modified its statute making the PACE lien positions subordinate. However, subordinating the lien position makes our PACE programs less attractive to investors and subsequently increases overall program costs.

FHFA seems to imply that PACE is an unnecessary program because there are alternative means of obtaining capital and loans for energy upgrades. **However, PACE is one of the few, if not the only, program that allows for deep energy retrofits, incorporates and prioritizes ALL the necessary energy reduction technologies, allowing for twenty year investments while serving New Hampshire's underserved residential market .** It is true that energy performance contracts also allow for extensive upgrades, but ESCOs are usually only interested in the MUSH (municipal, university, school and hospital) markets, seeking high energy savings, minimized risk and maximizing their return on investment. New Hampshire's demographics and scale issues currently preclude interest by ESCOs in residential work. **PACE allows for the opportunity to aggregate and consolidate multiple town, city and state assessments, and thus attract private investment dollars.** With the depletion of ARRA funding in 2012-2013 and the diminishing availability of Regional Greenhouse Gas Initiative funds, it is essential that New Hampshire leverage its available public financing dollars and find new funding resources.

New Hampshire's current residential utility programs are currently oversubscribed and have shorter payback periods (5 to 7 years) than are possible under PACE programs with longer amortization periods (twenty years). **Traditional bank lending programs have not been able to finance energy retrofits necessary to upgrade New Hampshire's housing stock because they**

are personal obligations of the owner of the property rather than attached to the property as PACE allows. Financing that addresses residential market barriers by using appropriately long amortization periods and attaching to property is essential -- 30% of New Hampshire energy expenditures are related to residential consumption.¹ Currently, only 7% of public financing funds available are dedicated to the residential sector, providing capital to retrofit .006% of New Hampshire's housing stock of 615,000 units. In 2010, only 182 residential energy loans were made, representing almost half the national average rate from existing programs.² In the current economic climate, consumers are leery of taking on new debt and the energy retrofit market is operating under the heavy burden of having to convince consumers that energy efficiency upgrades are economically viable and can produce positive cash flow. New Hampshire's statute requires that property owners experience a positive cash flow impact during the first year.³ **Even so, skepticism and a lack of demand persist for existing energy upgrade loan products. PACE programs are designed to incorporate and eliminate many of the problems that exist with current lending practices** by eliminating up-front costs, offering longer payback periods, and most importantly, eliminating the fear that the savings will never be realized if and when the homeowner needs to move. No other program to date incorporates all these advantages for homeowners in the residential segment. Moving PACE forward will go a long way to help state and local governments meet their local energy goals and support the nation as a whole in obtaining energy independence.

Section 2. Issue by Issue Comments:

Conditions and Restrictions Relating to PACE

Question 1: Restrictions should be removed. Fannie Mae, Freddie Mac, and other FHFA enterprises should be required to purchase mortgages with PACE assessments from programs that conform to previously established DOE parameters and the guidelines as established in HR 2599 (The PACE Assessment Protection Act).

- FHFA's letter and directive essentially treat PACE assessments as a second mortgage type lien that is then given priority over the original mortgage through its assessment mechanism.

¹ Vermont Energy Investment Corp & Jeffrey H. Taylor Associates, *Independent Study of (New Hampshire) Energy Policy Issues*, Sept. 2011, pg. 1-4

² Ibid, pg. 10-25,10-5,10-6

³ NH RSA 53-F:7(I).

- **PACE assessments are not loans and should be treated as other disbursements made from special tax financing districts.** State courts have already upheld the validity of PACE assessments and FHFA has no statutory authority to decide whether municipal assessments are valid or not. PACE assessments should be afforded the same treatment as all other special assessments. And unlike other special assessments, PACE assessments can improve a homeowner’s cash position.
- FHFA states that PACE assessments create “significant” risk to lenders and secondary market entities; yet FHFA offers no substantial evidence for this stance. **Early evidence suggests that there is a very low risk of default for PACE assessments.**⁴ Since many of New Hampshire’s loan programs are in their infancy, it is difficult to obtain true default rate numbers. However, anecdotal evidence in New Hampshire indicates that default rates for energy loans in general are low or non-existent. People’s United Bank has a current default rate of 0% for their commercial loan program. Additionally, a study conducted for the New Hampshire legislature showed that neighboring state energy loan programs had default rates much lower than the typical unsecured default rate of 3.5% and concluded that the data shows that, “the perception that energy loans carry an unacceptable level of risk is incorrect.”⁵
- PACE is designed to expose lenders only to the immediate unpaid balance. For example, a ten year loan at 4% for \$15,000 would likely expose the bank only to \$1,740.00, and even that amount would be picked up by the Loan Loss Reserve fund required by New Hampshire Law.⁶

⁴ Cynthia Boland Esq., *Local Governments and Federal Agencies Clash Over Property Assessed Clean Energy Programs*, Distributed Energy Financial Group LLC, 2010, pg. 3

⁵ Vermont Energy Investment Corp & Jeffrey H. Taylor Associates, *Independent Study of (New Hampshire) Energy Policy Issues*, Sept. 2011, pg. 10-23

⁶ NH RSA 53-F: 7(II).

- FHFA states that PACE assessments change valuations (potentially negatively). Generally, the inverse is true. **A home with energy upgrades is almost always considered more marketable than one without.** Additionally, rising energy costs for fuel only enhance this marketability. PACE assessments require an energy audit, are required to be cash flow positive and would create a “bonus” situation for subsequent home buyers. There is no evidence that the additional assessment attached to the home would override its benefits in terms of marketability.

Financial Risk to Enterprises Resulting From Subordination of Mortgage Security Interests to PACE Liens.

Question 2: FHFA suggests that mortgage holders are forced to absorb new credit risks when a municipality allows a PACE assessment on a new or existing home. Mortgage holders face this risk any time a municipality changes its tax rate, floats new bonds, or expands its municipal budget. Unlike regular tax assessments, homeowners can control associated costs and are not put in the position of having to move when taxes become too high. **PACE assessments help homeowners stay in place.** Thus, the current PACE prohibition is especially regressive on the elderly who have owned their homes for many years. As many elderly homeowners in northern New England heat with oil, kerosene and propane, they have no control over rising prices and the extreme price volatility of petroleum fuels. This problem is only expected to get worse over the next 20 years. PACE assessments are fixed, voluntary and are mutually beneficial for homeowners and society at large.

- In terms of the increase in payment, PACE assessments are usually structured to decrease overall costs for the homeowner and are **frequently cash neutral or cash positive.** New Hampshire statute states that, “Improvements shall be financed pursuant to an agreement under this chapter only on terms such that the property owner experiences a positive cash flow impact during the first year and the total energy cost savings realized by the property owner.”
- The lien-priming feature of PACE obligations insulates investors of mortgage backed securities from being saddled with energy inefficient investments in the event of foreclosure, especially in light of escalating energy prices. **Additionally, the lien-priming feature reduces the cost of capital to PACE participants.**

Programs do exist without the lien-priming feature but must have higher capital costs to attract bond and investor groups.

- **Risk occurs to investors (and originators) if the energy efficiency improvements do not provide the promised energy savings. Energy audits protect against this.** Upgrades must be technology blind and a priority system embedded within the program to ensure priority is given to projects with best payback periods and efficiencies.

Question 3: The risk here is minimal. Most, if not all PACE programs contain provisions limiting the combined LTC ratio. Steps are being taken to keep PACE administrative costs to a minimum. In small states such as New Hampshire, Maine, and Vermont, residential programs are and will most likely be administered by statewide programs with highly experienced staff. This will go a long way to reducing individual borrower's costs, improve return on investment, and dramatically lower default ratios, which currently stand at less than 2% nationally.

- Some states have utilized the expertise of existing resources to template and administer PACE programs. For example, Vermont has contracted with VEIC (Vermont Energy Investment Corp) and Efficiency Vermont to provide most of the administrative and back office for municipalities across the state. **New Hampshire is also considering the possibility of a state-wide centralized program to minimize costs and utilize economies of scale.** Additionally, private and non-profit program administrators currently exist in the commercial market (Ygrene Energy Fund, Clean Fund LLC, and a2energy in Ann Arbor). With increasing demand for residential PACE projects, these firms could choose to expand and compete for the residential market.
- **Advances in energy-efficiency technology and implementation procedures will naturally evolve along with the program and will be utilized as they improve.** There is no more risk involved with instituting energy efficiency measures today than waiting for the potential game changer technology to come along as long as payback remains within the life expectancy of the measure. Today's current building efficiency technologies are highly sophisticated and evolved. The mortgage holder incurs more risk by not upgrading the home and having to compete in a real estate market where newer and older homes have been fully upgraded and energy prices are steadily increasing. **Many of the conservation measures, such as air sealing and insulation, have 30 to 40 year life expectancies. This is not a technology that is going to change radically, whereas**

we are all but certain that petroleum products will continue to rise.

Additionally, helping homeowners reduce their monthly energy costs potentially insulates investors and mortgage backed security holders from potential foreclosure issues in the face of declining property values.

Question 4 FHFA and the associated Enterprises can insulate themselves by reviewing PACE program guidelines and **institute rule-making which stipulates allowable PACE programs must follow the DOE’s “best practices” program design** as outlined in the Department of Energy’s May 7, 2010, *Guidelines for Pilot PACE Financing Programs* or any DOE subsequent recommendations. *Additionally, the guidelines as outlined in HR 2599 further establish clear consumer protections and underwriting standards.*

- This document contains many terms and conditions that protect mortgage backed holders and investors including but not limited to: limiting PACE financing to only those measures that are “cost-effective”, requiring energy audits and modeling of expected savings, encouraging energy efficiency before renewable energy improvements (see general comments), adopting DOE’s recommended underwriting guidelines, appropriately sizing assessments and requiring specific LTV ratios. **DOE has spent extensive time and resources developing this program and has the expertise and personnel to safely monitor it.** It is in the DOE’s and all program participants’ best interest to make sure that all underlying mortgage holders are protected. **DOE’s and HR 2599’s guidelines serve as a performance floor but the market will certainly push for higher standards of implementation as it will improve each company’s bottom line.**

PACE and the Market for Home-Improvement Financing

Question 5: Only PACE can incorporate ALL needed elements to a true energy retrofit including energy efficiency measures, thermal design, and renewable energy measures WHILE eliminating the fear of being responsible for the full upfront costs should the homeowner need to move.

Model	Residential Homeowners	Interest Holders
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<p>PACE</p>	<p>PROs</p> <ul style="list-style-type: none"> • Utilizes multiple technologies and providers • Loan stays with home/no repayment • long payback periods = Lower payments • Lower rates through municipality • Paid for by program participants <p>CONs</p> <ul style="list-style-type: none"> • Requires equity in home 	<p>PROs</p> <ul style="list-style-type: none"> • Requires Energy Audit • Lower payments = Lower overall default risk • Cash positive or neutral programs > lower risk and more stable homeownership • *improvements identified and controlled by energy audit • potential for aggregation • Private capital interest <p>CONs</p>
<p>Traditional Debt</p>	<p>PROs</p> <ul style="list-style-type: none"> • Can utilize multiple Technologies and EE measures • No restrictions on projects/technologies <p>CONs</p> <ul style="list-style-type: none"> • Requires repayment upon resale • higher rates *Shorter loan periods 	<p>PROs</p> <ul style="list-style-type: none"> • admin. Infrastructure in place • no regulatory requirements <p>CONs</p> <ul style="list-style-type: none"> • Project payback tied to loan term • No energy audit
<p>EEMs Energy Efficient Mortgages</p>	<p>PROs</p> <ul style="list-style-type: none"> • Can incorporate multiple Technologies and EE measures • Longer terms > greater savings <p>CONs</p> <ul style="list-style-type: none"> • Requires repayment upon resale • Tied to purchase or refinance • Not widely utilized or marketed 	<p>PROs</p> <ul style="list-style-type: none"> • Existing governmental program *Requires an energy audit • Utilizes government credit enhancements <p>CONs</p> <ul style="list-style-type: none"> • Government program can be withdrawn • Not widely utilized by lenders

<p>OBF On Bill Financing</p>	<p>PROs</p> <ul style="list-style-type: none"> • Loan stays with meter, incorporates rental market <p>CONs</p> <ul style="list-style-type: none"> • Can't incorporate multiple utilities and providers (especially thermal) • Usually only applicable to the energy source provided by the utility • Not available for petroleum products 	<p>PROs</p> <ul style="list-style-type: none"> • Larger market with rental • Existing billing structure in place, low admin costs <p>CONs</p> <ul style="list-style-type: none"> • Requires agreement between Utility & state PUC • Wide variability in programs between Utilities and States
<p>Leasing</p>	<p>PROs</p> <ul style="list-style-type: none"> • 3rd party ownership • Guaranteed savings • Ease of use with specialty lenders <p>CONs</p> <ul style="list-style-type: none"> • Technology specific • Operating and maintenance costs • Incentives go to 3rd party owner • Tend to be vendor driven results in non-integrated EEM • Rarely if ever available for efficiency measures in residential sector 	<p>PROs</p> <ul style="list-style-type: none"> • Consumer friendly • No regulatory requirements/market driven <p>CONs</p> <ul style="list-style-type: none"> • Commoditization/scale issues • risk with declining utility rates • sparsely used for EE measures
<p>PPAs</p>	<p>PROs</p> <ul style="list-style-type: none"> • 3rd party ownership • No homeowner maintenance • Guaranteed savings • Ease of use with specialty lenders <p>CONs</p> <ul style="list-style-type: none"> • Technology specific • Incentives go to 3rd party owner • Results in non-integrated solutions 	<p>PROs</p> <ul style="list-style-type: none"> • Consumer friendly • No regulatory requirements <p>CONs</p> <ul style="list-style-type: none"> • Commoditization/scale issues • Responsible for O&M • Risk with declining utility rates • Seldom incorporates EE measures • Mostly used for RE installations

Question 6: No evidence or research exists to date that supports (or disapproves) the supposition **that attaching a PACE assessment to a property will decrease the underlying property value.**

- According the NH Office of Energy and Planning, as of October 2011, over 83 towns and cities have enacted property tax exemptions for homeowners who are concerned that installing renewable energy improvements will **increase the value** of their properties.

Question 7: PACE projects combine both thermal and electrical efficiency measures leading to a better overall outcome.

- **Maximizing these efficiencies will lead to a higher carbon footprint reduction** vs. encouraging one or the other as alternately financed projects tend to do.

Question 8: A study, conducted by the Institute for Energy and the Environment at Vermont Law School, looked at the reason why even with an impressive state-wide energy efficiency program, more homes had not adopted energy efficiency measures. The authors concluded that, along with other obstacles, **the scale of demand for energy efficiency upgrades was insufficient** to attract lender interest and sustain programs over the long run (page 9).

- The authors go on to state that homeowners are hesitant to get involved with current cumbersome (EEM) products, do not trust that the savings will be adequate to cover the loan payments, and are concerned about the improvements increasing the value of their homes (in contradiction of FHFA's current perception). With the exception of the latter, PACE programs alleviate all of these concerns and the authors conclude a **PACE program is warranted** (page 11).⁷

A common theme preventing energy efficiency programs from moving forward seems to be **consumer "debt aversion"**. **Only PACE and On Bill Financing alleviate** a good portion of **this aversion** by keeping the liability with the home not the consumer. However, difficulties arise in incorporating all energy savings with OBF if the homeowner utilizes more than one utility (for example, natural gas and electric).

⁷ Tyrell, Wigg, Hagan, *Financing Residential Energy Efficiency in Vermont*, Institute for Energy and the Environment at Vermont Law School, July 2011

PACE and Protections for the Homeowner-Borrower

Question 9: What are the consumer protections and disclosures mandated by PACE programs? Do they differ from other consumer protection/disclosures of home-improvement financing? Are there enforcement mechanisms in place?

In New Hampshire there are significant protections as to the amount of money that can be spent on any one property. New Hampshire statute provides for a 15% of total property value or \$35,000 project cap, whichever is less.

Additionally, the efficiency requirements are much more stringent than typical home improvement financing. In terms of enforcement mechanisms, only qualified contractors perform the work, and the administrative agency can rescind qualifications if performance criteria are not met.

Question 10: Are home-owners notified that the PACE financed project may cause the value of their home to decline? If homeowners are not notified, is there risk to be borne by mortgage holders?

Before homeowners can participate in the program, they must attend a workshop on both the positive and negative aspects of investing in their home.

Question 11: Are home-owners notified of the risk that the cost of their PACE assessment might be greater than the utility-cost savings? If homeowners are not notified, is there risk to be borne by mortgage holders?

Homeowners will receive a complete return on investment breakout for each measure installed, and the collective impact on their heating, cooling, and electric bills. Utility cost savings are usually only a portion of the savings realized with PACE energy retrofits.

Question 12: Are homeowners-borrowers notified of potential additional costs such as the costs of insuring, maintaining, and repairing equipment, beyond the direct cost of the PACE obligation? YES

If homeowners are not notified, is there risk to be borne by mortgage holders?

New Hampshire statute has built in homeowner-borrower safety measures and requires that homeowners receive risk statements along with the requirement that post-installation energy use data reports be submitted for program evaluation.

Question 13: Are homeowners-borrowers notified of the possibility that subsequent purchasers may reduce the purchase price due to the existence of the PACE assessment? If homeowners are not notified, is there risk to be borne by mortgage holders?

Both sellers and buyers have the option of settling up any outstanding balance of the PACE financing at the time of sale. There is no prepayment penalty. Subsequent homeowners-borrowers may reduce their offering price for a variety of reasons (such as declining neighboring values, new development, etc.). No evidence exists that purchasers will or have been reducing purchase prices due to existing PACE obligations.

PACE and Underwriting Standards

Question 14: Compared to other providers of home-improvement loans (esp. banks), do PACE programs consider the following: All PACE programs are written with consideration for determining the borrower's ability to repay the assessment. Most PACE programs include non-acceleration clauses, equity tests, project limitations, and cost effectiveness measures as protections for the underlying mortgage owners.

New Hampshire's PACE statute requires, at a minimum, homeowners to have been current on property taxes for three years, to be subject to no involuntary liens, to have been subject to no notices of default on property-based debt for three years, and to be current in mortgage payments.⁸ Also, as previously indicated, the New Hampshire statute includes a project cap and 15% equity requirement or LTV based on assessed value of the property multiplied by the municipality's current equalization ratio. New Hampshire municipalities also have the flexibility to make more stringent credit worthiness assessments, as needed, to protect mortgagees.

- Borrower creditworthiness YES
- Total LTV ratios consistent with national standards YES
- Appraisals consistent with national standards YES

Question 15: What factors, metrics and analytical tools exist in PACE underwriting? Have these been tested and validated?

⁸ NH RSA 53-F: 5(II).

Standard ASHRAE level one and level two audits, administered by BPI certified auditors, are currently utilized. These are the standard metrics used by Department of Energy programs nationwide. Additionally, New Hampshire statute requires that post-installation reports are filed indicating that all installations were made correctly and in accordance with code. Contractors must also submit cost documentations and permit copies.

Question 16: What factors, information, metrics and assumptions do PACE programs use to determine if homeowner-borrower has sufficient cash-flow/ income? FICO scores and local tax records.

NH eligibility requirements provide that prior to entering into any agreement with a property owner, the municipality must determine that the homeowner is current on any taxes or assessments levied within the past 3 years, there are no involuntary liens, and that the property is current on all mortgage debt. **Additionally, property owners must experience a positive cash flow impact within the first year.** Most importantly, the statute specifically states that **the municipality (or agent) can adopt any additional criteria for determining creditworthiness of property owners.**

Have these been tested and validated? YES, in other states.

Other: Requests for Studies - Commenter should provide supporting data and documentation for each of their responses. FHFA is interested in studies analyzing the following: We have footnoted all reports we refer to above.