March 26, 2012

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

Submitted via email to RegComments@fhfa.gov

RE: RIN 2590–AA53, Federal Housing Finance Agency Advance Notice of Proposed Rulemaking concerning mortgage assets affected by PACE programs

Dear Mr. Pollard:

The Solar Energy Industries Association (SEIA) and its 1,100 members would like to express our appreciation for the opportunity to comment on the Federal Housing Finance Agency's (FHFA) Advance Notice of Proposed Rulemaking regarding the Property Assessed Clean Energy (PACE) financing mechanism and the tie to mortgages, and the opportunity to comment on FHFA guidance that effectively ended residential PACE program activity in most states.[1]

SEIA respectfully requests that the FHFA issue a new rule applicable to government sponsored enterprises (GSEs) Fannie Mae, Freddie Mac, and FHFA-regulated entities which would allow these entities to purchase mortgages for properties with PACE liens, thereby allowing PACE programs to proceed. SEIA recommends that the GSEs purchase mortgages with PACE liens from programs that conform to the standards and guidelines established in H.R. 2599, The PACE Assessment Protection Act,[2] to protect the interests of local governments, homeowners, mortgage lenders, and GSEs.

I. Introduction

Established in 1974, the Solar Energy Industries Association is the national trade association of the U.S. solar energy industry. Through advocacy and education, SEIA and its member companies are building a strong solar industry to power America. As the voice of the industry, SEIA works to make solar a mainstream and significant energy source by expanding markets, removing market barriers, strengthening the industry and educating the public on the benefits of solar energy. SEIA represents the entire solar industry, encompassing all major solar technologies (photovoltaics, concentrating solar

[1] 77 Fed. Reg. 17, 3958 (January 26, 2012).

[2] http://thomas.loc.gov/home/gpoxmlc112/h2599_ih.xml

power and solar heating and cooling) and all points in the value chain, including financiers, project developers, component manufacturers and solar installers.

The United States has some of the richest solar resources in the world, and last year the solar industry doubled the solar capacity installed in the U.S. compared to the preceding year. In the residential sector alone, 297 megawatts of solar were installed in 2011, an increase of 11 percent over 2010.[3] This phenomenal growth is the result of private investment, technological innovation, a maturing industry and smart federal and state policies. The increased deployment of solar energy depends on many elements of regulation being favorable, and one of those elements is PACE financing.

II. General Comments on the Proposed Rule

SEIA respectfully offers these comments in response to the advance notice of proposed rulemaking concerning mortgage assets affected by PACE programs:

A. PACE programs were a growing success until FHFA guidance halted PACE program activity

PACE financing is a tool which allows local governments to finance energy improvements on homes and businesses, which property owners then repay through their property taxes. PACE financing can both increase property values and save consumers money by reducing energy costs. PACE accelerates the insertion of solar into the energy security mix, and reduces the need for peaking power plants, thus reducing greenhouse gases.

PACE financing was pioneered by the City of Berkeley, California. The innovative financing structure, known as Berkeley FIRST, was a success. Multiple pilot programs demonstrated that PACE properties have lower foreclosure rates, increased energy savings, and provided other benefits consistent with the initiative's overall policy objectives. Within two years of the first launch, twenty-seven states and the District of Columbia had authorized the creation of PACE programs, typically with strong bipartisan support among legislators.[4] These programs led to the creation of hundreds of jobs and the investment of millions of dollars. They allowed property owners to finance energy efficiency and renewable energy projects, including the installation of solar energy systems, for their homes and businesses.

However, in July, 2010, the Federal Housing Finance Agency (FHFA) issued formal guidance to GSEs Fannie Mae and Freddie Mac that prohibited GSEs from purchasing mortgages on the secondary market for properties with PACE liens. As nearly three-quarters of new mortgages are ultimately purchased by the GSEs, this guidance effectively ended residential PACE program activity in most states.

[3] U.S. Solar Market Insight™ Year in Review: 2011. Executive Summary available at http://www.slideshare.net/SEIA/us-solar-market-insight-report.

[4] http://www.dsireusa.org/documents/summarymaps/PACE_Financing_Map.pdf

B. PACE programs support tremendous growth in the solar industry

The solar industry and PACE financing go hand-in-hand as job creation engines. The National Solar Jobs Census of 2011 showed that over 100,000 people were employed by the solar industry as of August 2011. The solar industry experienced 6.8 percent growth from August 2010 to August 2011, growing nearly ten times faster than the overall economy.[5] Furthermore, a recent study published by the U.S. Department of Energy found that solar energy could meet 14 percent of U.S. electricity demand by 2030 and 27 percent by 2050, leading to 290,000 new solar jobs by 2030 and 390,000 new solar jobs by 2050.[6] However, this job growth will only be achieved with the right policies and financing in place for solar deployment, such as PACE programs.

PACE financing is a job-creation engine not just for the solar industry, but for the renewable energy and energy efficiency industries as well. If only one percent of U.S. homes participated in PACE programs, the projects would generate 226,000 jobs and $42 billion in increased economic output. These programs would also generate an additional $4.2 billion in combined federal, state and local tax revenue.[7] This job creation potential is one of the critical reasons why SEIA asks the FHFA to permit GSEs to purchase mortgages with PACE liens.

III. <u>Responses to Specific Questions Posed in the ANPR</u>

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?

The conditions and restrictions GSEs place on properties with PACE liens are wholly unnecessary. If certain conditions or restrictions are viewed as necessary, there are numerous outlets the FHFA can look to that provide guidelines on how to establish clear consumer protections and underwriting standards that will protect both homeowners and lenders. For example, the White House issued guidance on PACE programs in October of 2009,[8] as did the Department of Energy in May of 2010.[9] House bill H.R. 2599,

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[5] National Solar Jobs Census, 2011: Report available at: http://thesolarfoundation.org/sites/thesolarfoundation.org/files/TSF_JobsCensus2011_Final_Compressed.pdf

[6] http://www1.eere.energy.gov/solar/sunshot/vision_study.html

[7] ECONorthwest Study "Economic Impact Analysis of PACE," May 2011 http://pacenow.org/blog/wp-content/uploads/PACE-Econometric-Study-by-ECONorthwest-for-PACENow-5-4-11.pdf

[8] Policy Framework for PACE Financing Programs. Available at: http://www.whitehouse.gov/assets/documents/PACE_Principles.pdf

[9] Guidelines for Pilot PACE Financing Programs: http://www1.eere.energy.gov/wip/pdfs/arra_guidelines_for_pilot_pace_programs.pdf

The PACE Assessment Protection Act of 2011, includes many of these same consumer and lender protections. For example, one protection is that PACE financing only be available to homeowners with a solid history of timely mortgage and tax payments and no recent bankruptcies. Eligible PACE projects must also be cost-effective and pay for themselves by having a savings-to-investment ratio greater than one.

Another important improvement that should be made to PACE programs is to allow PACE programs to include pre-paid power purchase agreements (PPAs) and leases. PPAs and leases allow for homeowners to purchase a certain term's worth of electricity, usually twenty years, from a system owner as opposed to purchasing a system outright. There are several benefits of including pre-paid PPAs and leases as part of the PACE program. The system owner may be able to provide solar energy for less than it would cost the homeowner to purchase a system outright, thereby needing a lesser PACE lien. This provides lender protection, as a homeowner is less likely to default on a mortgage payment because the lien amount is lower. In addition, including PPAs and leases in PACE programs leaves the homeowner with no additional costs to pay from monitoring, maintenance, and insurance of the system, as these elements are included within a PPA or lease contract. In September of 2010, California set a precedent by amending the PACE program to include PPAs and leases.[10]

Finally, PACE programs should not require that a system be permanently fixed to the home in order to take advantage of the PACE lien. Depending on the characteristics of a home and the land it is located on, a ground-mounted system installed in the homeowner's yard may be the optimal design for the solar system. In this event, the solar system would still be located on the same real property for which a real estate tax bill is issued. In the circumstance when the homeowner is using a pre-paid lease to provide solar electricity for twenty years, the system owner will not agree to permanently affix the solar system to a customer's house. Rather, the solar equipment will be provided to match the length of the twenty-year lease. In both cases, there is no need to require that the solar system be permanently fixed to the home in order for a homeowner to take advantage of a PACE program.

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?

and

[10] Assembly Bill 44, State of California. http://info.sen.ca.gov/pub/09-10/bill/asm/ab_0001-0050/ab_44_bill_20100930_chaptered.pdf

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 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?*

The guidance issued by FHFA to the GSEs was based on the erroneous characterization of PACE assessments as loans and the assumption that their presence increased the risk of default on the underlying mortgage. In fact, the opposite has proven to be the case. Analysis of existing PACE programs found that mortgage default rate of homes with a PACE lien is 1/30th that of non-PACE homes. Only two defaults were found in 2,565 homes with PACE programs, versus 82 on same number of non-PACE homes.[11]

Not only are the mortgage default rates reduced, but PACE programs also protect mortgage lenders by providing the homeowners with immediate cash savings that can be used towards paying the mortgage and/or the PACE lien. PACE-financed solar systems serve to immediately reduce monthly expenditures on energy and serve as a long-term hedge against rising energy costs, thus freeing up funds which can be used to make mortgage payments.

Particularly relevant to the solar industry is the fact that PACE programs also reduce the risk to mortgage lenders through an increased home value as a result of a PACE solar project. The falling costs of solar,[12] coupled with rising electricity costs,[13] have made a solar energy installation a sensible investment for many homeowners. Numerous studies have shown that homes with renewable energy measures increase the value of a home. For example, a study by the Lawrence Berkeley National Laboratory found that homes with solar systems installed sold for an average sales price premium of $17,000 over homes without solar systems.[14] The installed solar system increases the value of the home by more than the net cost of the solar system. A key point to consider is that even if the property value on a home decreases for other reasons, a solar system maintains its value due to the energy it will generate over its lifetime, thus making the home an attractive buy for the term of the PACE lien.

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[11] http://pacenow.org/blog/wp-content/uploads/PACE-2011-Bill-Webinar-071911.pdf

[12] PV system prices fell 20% in 2011. *See* U.S. Solar Market Insight™ Year in Review: 2011, Executive Summary, p. 3.

[13] U.S. electricity prices experienced an average annual increase of 2.6% in the past five years. U.S. EIA Short-term Energy Outlook. available at: http://205.254.135.7/forecasts/steo/pdf/steo_full.pdf

[14] An Analysis of the Effects of Residential Photovoltaic Energy Systems on Home Sales Prices in California: April 2011. Report can be found here: http://eetd.lbl.gov/ea/emp/reports/lbnl-4476e.pdf

IV. Conclusion

The solar industry is one of the fastest growing industries in the United States. However, that growth would be put in jeopardy should PACE programs around the country continue to be halted by adverse FHFA rules. For all of the above reasons, we respectfully request that the FHFA look to guidelines set by several states, the White House, the Department of Energy and H.R. 2599 in issuing a new rule to GSEs which would allow these entities to purchase mortgages for properties with PACE liens. PACE programs across the country should be authorized to proceed without further delay.

Any decision that reduces solar deployment impinges on the President's stated goals of domestic job growth, reducing greenhouse gas emissions and increased deployment of renewable energy. To support these national priorities, the GSEs must facilitate solar installations, not thwart them.

If you have any questions, please do not hesitate to contact the undersigned.

Respectfully,

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