UTAH CLEAN ENERGY
We Partner to Build the New Clean Energy Economy

March 26, 2012

Mr. 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; Comments on Advanced Notice of Proposed Rulemaking and EIS Scoping Comments

Dear Mr. Pollard:

Utah Clean Energy is a state-based, non-profit public interest organization working to create healthy, thriving communities, empowered and sustained by clean energy. Our mission is to lead and accelerate the clean energy transformation with vision and expertise. Our work focuses on preventing wasted energy, facilitating clean energy, and creating a smart energy future. In these comments, we are joined by 101 individuals from local governments, businesses, and the general public who have signed on in support of PACE, energy efficiency, renewable energy, and a smart energy future.

Thank you for the opportunity to provide comments on the Federal Housing Finance Agency's ("FHFA") Advanced Notice of Proposed Rulemaking ("ANPR") regarding mortgage assets affected by PACE programs. This rulemaking provides an opportunity to establish a fact-based record and to correct misinformation and misunderstandings reflected in FHFA's unilateral action to halt local government PACE programs on July 6, 2010. We urge FHFA to look for ways to accommodate broadly beneficial PACE programs. To this end, we recommend that the FHFA adopt reasonable underwriting standards, drawing from available best practices, that ensure local PACE programs are designed to maximize benefit and minimize risk, as described below in our responses to issues FHFA raised in its ANPR.

*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?*

PACE assessments present minimal risks to lenders, investors, homeowners, and Government Sponsored Enterprises ("GSEs"). Appropriate conditions relating to FHFA-regulated entities' dealing with mortgages on properties participating in PACE programs already exist. States and

Local governments that established PACE programs prior to the July 6, 2010 action by FHFA developed program standards to protect lenders and consumers. The White House (October 18, 2009) and the Department of Energy (May 7, 2010) both published national PACE guidelines with clear, strong underwriting standards to ensure that homeowners are able to afford the improvements. Additionally, a proposed bill in the House of Representatives with widespread, bi-partisan support, (HR 2599, *PACE Assessment Protection Act* – Hayworth R-NY19) further delineates national standards to minimize risk to lenders and consumers.

FHFA should work in good faith with state and local governments, as well as the Department of Energy, to develop appropriate standards that allow PACE programs to move forward. For example, FHFA should consider establishing underwriting standards that conform to the standards and guidelines established in HR 2599, to protect the interests of local governments, homeowners, mortgage lenders, and GSEs.

Consumer and lender protections proposed in HR 2599 include the following:

- 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 15% equity in their home.
- Project Limitations: 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 (SIR > 1).
- Quality Work: A required energy audit and any work performed must be done by an accredited, qualified contractor.
- Soundness: PACE financing is only available to homeowners who have a solid history of on-time mortgage and tax payments and no recent bankruptcies.

Although FHFA asserts that PACE presents "significant safety and soundness" concerns, there is no evidence that this is true. There is long-standing experience, borne out by studies, that energy efficiency and renewable energy improvements reduce homeowners' energy bills and increase their property's value, strengthening their financial position and increasing the value of a lender's collateral. PACE financed improvements allow homeowners to hedge themselves against fuel price spikes, rising fuel costs, and rising energy rates over time. These factors lessen, if not eliminate, the safety and soundness risk than the FHFA has asserted.

Because energy efficiency and renewable energy improvements reduce homeowners' energy bills, they are inherently safe investments for homeowners and lenders. Specifically, energy efficiency and renewable energy projects create a fixed hedge against rising fuel costs, rising energy rates, and extraordinary demands for energy that endanger a homeowner's ability to make mortgage payments.

Moreover, numerous studies show that energy efficiency and renewable energy measures 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. Another 2011 study of homes with Energy Star ratings, published in the *Journal of Sustainable Real Estate*, showed purchase prices to be nearly $9.00 higher per square foot for energy efficient homes. And an earlier study published in *The Appraisal Journal* in 1998 which showed that residential selling prices are positively correlated with lower energy bills, most often attributed to energy efficiency improvements.

Finally, the early results of PACE pilot programs in Boulder County, CO; Sonoma County and Palm Desert, CA; and Babylon, NY show that PACE presents minimal risk: there are only a handful of known defaults out of nearly 3,200 upgraded properties—substantially fewer than the rate of default for non-PACE property-owners in the same districts. A study by the American Council for an Energy-Efficient Economy ("ACEEE") demonstrated that default rates by participants in energy efficiency finance programs are "extremely low."

Appropriate conditions relating to FHFA-regulated entities' dealing with mortgages on properties participating in PACE programs already exist. FHFA should establish underwriting standards that conform to the standards and guidelines established in *The PACE Assessment Protection Act*, HR 2599, to protect the interests of local governments, homeowners, mortgage lenders, and GSEs.

*Response to Questions 2 through 16:*
Energy efficiency is a focus of public policy in Utah, although no PACE-enabling legislation has yet been adopted; in part, Utah's ability to adopt PACE-enabling legislation is hinging on the outcome of this critical rulemaking. Nonetheless, Utah prioritizes energy efficiency, and the Utah Legislature passed a joint resolution in 2009 prioritizing energy efficiency among other energy resources. In 2011, Utah's Governor included maximizing energy efficiency, conservation, and demand-response as a goal of his ten-year, strategic energy plan.

However, despite robust support for energy efficiency in Utah, financial barriers remain obstacles to citizens' increased investment in energy efficiency and renewable energy. Utah Governor Gary Herbert's 10-Year Strategic Energy Plan identifies financing as a key barrier to residential energy efficiency improvement and renewable energy adoption in the state. However, with the termination of American Recovery and Reinvestment Act funding, there are no home energy efficiency or renewable energy financing programs in the state of Utah. A PACE program would help communities across the state to address these barriers.

While financing options are being explored by various entities in Utah, none directly address the two main barriers to energy efficiency or renewable energy upgrades: high upfront costs and the concern that homeowners will be prevented from recouping the costs of home retrofit projects if they choose to sell their homes.

A new report by Lawrence Berkeley National Laboratory entitled "Scaling Energy Efficiency in the Heart of the Residential Market: Increasing Middle America's Access to Capital for Energy Improvements" notes that while energy efficiency improvements have many health, economic, and environmental benefits, "[t]he upfront cost of comprehensive home energy improvements is a barrier to investment. Many middle income households need financing to overcome this barrier – and capital access has plummeted in the wake of the recession." PACE financing solves a key problem that holds back many home efficiency and renewable energy improvements.

PACE programs will have additional economic benefits for Utah. At a time when many building professionals are experiencing problems finding sufficient work, PACE financing will lead to more investment in renewable energy systems and home energy efficiency upgrades. This will be an economic boon for the construction, manufacturing, and design sectors, as well as a benefit for environmental protection. Increased economic activity will also drive technological advances and will lower costs in the sector.

Additionally, PACE financed projects will allow homeowners to decrease their power bills and to hedge against changes in fuel costs as demand for energy increases. The savings in electricity that flow from these projects also has the potential to offset the need to build costly power plants in the future, costs that are passed onto ratepayers through increased bills. Indeed, Utah's only investor owned utility has stated publically that it plans to request rate increases every year for the foreseeable future due, in substantial part, to load growth. Actions that individual homeowners can take to reduce their load, aggregated through PACE financing, can exert downward pressure on continuously rising rates.

The state of Utah is beginning a program to give energy efficiency scores to homes that are sold in the state. Additionally, realtors and property appraisers throughout the state are beginning to use a new appraisal form, put out by the Appraisal Institute, that allows them to more accurately take into account the economic advantages of solar and energy efficiency upgrades when determining the market price of a house. These developments can facilitate the proper valuation of PACE-financed upgrades.

Many of FHFA's concerns about PACE programs involve a theoretical house that loses value after completing upgrades using PACE funding. Studies show, however, that energy efficient homes and homes that have low power bills due to their renewable energy generation capabilities have a higher valuation than comparable homes without these upgrades. In addition to saving energy and helping to prevent environmental degradation, home energy efficiency and renewable energy upgrades help homeowners save money and pay for themselves in lower energy bills.

Other concerns raised in the ANPR depend on poorly designed PACE programs that lead to undesirable outcomes. These concerns ignore already published guidelines for PACE best practices, such as the Department of Energy's. Before a municipality can implement a PACE program, it must be authorized by state legislation and it must conform to guidelines established by this legislation. FHFA guidance could build upon already established best practices and provide that the negative scenarios anticipated in questions 10 through 14 are very unlikely to occur. Similarly, standards for the tools and methodologies alluded to in questions 15 and 16 could be established. These concerns are further allayed by HR 2599, which, if adopted, sets PACE program standards. PACE programs that conform to best practices present many advantages over other financing mechanisms. For example, these programs require homeowners to work with certified contactors and receive information regarding the impact that PACE financing will have on their mortgage.

*Conclusion*

The following undersigned group of organizations, local governments, businesses, and individuals strongly urge FHFA to reconsider its opposition to PACE programs and to revise its Statement and Directive. We recommend that FHFA's proposed rule provide 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 standards and guidelines such as those established in proposed PACE Assessment Protection Act, HR2599, to protect the interests of local governments, homeowners, mortgage lenders and GSEs.

Thank you for your consideration of these comments. Any questions can be directed to Sophie Hayes with Utah Clean Energy at (801) 363-4046, sophie@utahcleanenergy.org.

Sincerely,

Sara Baldwin
Senior Policy & Regulatory Associate

Submitted electronically to RegComments@fhfa.gov on March 26, 2012 on behalf of and with expressed permission from the following 101 individuals:

## Local/State Government

**Mayor Ralph Becker**
**Salt Lake City**
Salt Lake City, UT 84111

**Mayor Dave Sakrison**
**City of Moab**
Moab, UT 84532

**Representative Joel K. Briscoe**
**Utah House of Representatives, District 25**
Salt Lake City, UT 84102

**Vicki Bennett**
**Director**
**Salt Lake City Division of Sustainability and Environment**
Salt Lake City, UT 84114

**Mayor Peter Corroon**
**Salt Lake County**
Salt Lake City, UT 84114

**Tyler Poulson**
**Environmental Sustainability Program Manager**
**Park City Municipal Corporation**
Park City, UT 84102

**Ashley Koehler**
**Sustainability Coordinator**
**Summit County**
Coalville, UT 84017

**Theodore J. Lazenby**
**Project Manager**
**Salt Lake County Office of Energy Management**
Salt Lake City, UT 84114

## Business Owners and Managers

**James E. Schwing, P.E.**
**Vice President**
**CH2M Hill**
Salt Lake City, UT 84111

**Peter Metcalf**
**CEO/President & Co-Founder**
**Black Diamond Equipment, Ltd.**
Salt Lake City UT 84124

**Brent Giles**
**Chief Sustainability Officer**
**Powdr Corp/Park City Mountain Resort**
Park City, UT 84060

**John Evans**
**Marketing Director**
**Petzl America**
Clearfield, UT 84015

**Andy Bailey**
**Owner/Operator**
**Bluegrass Excavation, Inc.**
Francis, UT 84036

**Joel Ban**
**Ban Law Office PC**
Salt Lake City, UT 84105

**Joe Raycraft**
**President**
**Utah Solar & Alternative Energy**
Park City, UT 84098

**Mike Walton**
**Sales Manager**
**Solartek Solutions**
Salt Lake City, UT 84111

**DeeAnn Downing**
**Red Ant Works, Inc.**
Park City, UT 84060

**Toby Schmidt**
**Co-Owner Creative Energies**
Salt Lake City, UT 84115

**Charlie Boas**
**Utah Sales & Business Development**
**Creative Energies, LLC**
Salt Lake City, UT 84115

**David A. Wilson**
**Executive Officer**
**Utah Energy Conservation Coalition**
**Energy Rated Homes of Utah**
Orem, UT 84058

**Dave Sheldon**
**Owner/ Master Electrician**
**Alpenglow Solar, LLC**
Park City, UT 84098

**Ryan Seeboth**
**Engineer**
**Alpenglow Solar, LLC**
Park City, UT 84098

**Paige Croswhite**
**Sales Manager, Mountain West Region**
Broomfield, CO 80021

**Ken Gardner**
**Owner**
**Gardner Engineering Alternative Energy Services**
Ogden, UT 84405

**Doug Shipley**
**President/CEO**
**Intermountain Wind and Solar**
Woods Cross, UT 84087

**Mark Richards**
**Vice President Business Development**
**Intermountain Wind and Solar**
Woods Cross, UT 84087

**Darren Foster, CPMR**
**Rocky Mountain Integrated Solutions, Inc**
Bluffdale, UT 84065

**Ken Schreiner**
**Schreiner Productions & ProBusiness Video**
Salt Lake City, UT

**Richard Justice**
**President**
**ESCO Services, Inc.**
Salt Lake City, UT 84115

**David Broadbent**
**Owner**
**AmeriTech**
Salt Lake City, UT 84108

**Brynn Brodie**
**Red House Farm**
Boulder, UT 84716

**Kate Whitbeck**
**Owner/Head of Sales**
**Momentum Recycling**
Salt Lake City, UT 84106

**Greta Belanger de Jong**
**Editor & Publisher**
**CATALYST magazine, New Moon Press**
Salt Lake City, UT 84102

**Mark D. Thomas**
**Principal, Clifton Consulting**
Holladay, UT 84124

**Liberty Valentine**
**Owner**
**Washington Square Cafe/Clock Tower Catering Co.**
Salt Lake City, UT 84111

**Jeff Robertson**
**Customer Complaints Specialist**
**USANA Health Sciences**
Salt Lake City, UT 84120

**Kyla Mullen**
**ReDirect Guide**
Salt Lake City, UT 84103

**Chad Hofheins**
**Owner**
**Synergy Power Inc.**
Alpine, UT 84004

**Alonzo Thayn**
**Owner**
**Wasatch Natural Organic Services**
Salt Lake City, UT 84105

**Jordan Gates**
**Solar Thermal Specialist**
**The Harris Dudley Company**
Salt Lake City, UT 84115

## University/College Professors

**Naomi Franklin**
**Research Professor of Biology**
**University of Utah**
Salt Lake City, UT 84104

**Thomas A. Kursar**
**Professor, Department of Biology**
**University of Utah**
Salt Lake City, UT 84112

**Mary Ann Wright**
**Adjunct Instructor, Mining Engineering**
**University of Utah**
Salt Lake City, UT

**Dr. Edwin R. Stafford, Ph.D**
**Director, Center for the Marketing Diffusion of Renewable Energy and Clean Technology**
**Jon M. Huntsman School of Business**
**Utah State University**
Logan, UT 83422-3560

**Phyllis Coley, Distinguished Professor**
**Department of Biology, University of Utah**
Salt Lake City, UT 84112

**Jennifer Eden**
**Adjunct Faculty, Earth Sciences**
**Westminster College**
Salt Lake City, UT 84124

## Non-Profit and Religious Organizations

**Brian Moench, MD**
**President**
**Utah Physicians for a Healthy Environment**
Salt Lake City, UT 84124

**Dan Mayhew**
**Conservation Chair**
**Sierra Club, Utah Chapter**
Salt Lake City, UT 84106

**Jim Catlin**
**Executive Director**
**Wild Utah Project**
Salt Lake City, Utah 84101

**Kathy Van Dame**
**Policy Coordinator**
**Wasatch Clean Air Coalition**
Salt Lake City, UT 84121

**Andy Hultgren**
**Founder**
**yushouldcare.org**
Orem, UT 84097

**Marjorie Coombs**
**Unitarian Church**
Salt Lake City, UT 84108

**Karen Hevel-Mingo**
**Executive Director**
**Breathe Utah**
Salt Lake City, UT 84152

**Susan Soleil**
**Executive Director**
**Utah Interfaith Power & Light**
Salt Lake City, UT 84147

**Bill Barron**
**Executive Director**
**Renewable Energy Resources**
Salt Lake City, UT 84105

**Terry Marasco**
**Utah Clean Air Alliance**
Salt Lake City, UT 84110

**Michael Mielke**
**Post Carbon Salt Lake City**
Salt Lake City, UT 84103

**Gordon Bosworth and Bobbie Cleave**
**Boulder Community Alliance**
Boulder UT, 84716

## Citizens

**Tanya Andrew**
Salt Lake City, UT 84105

**Joyce & John Barnes**
Salt Lake City, UT 84124

**Kevin Bell**
Salt Lake City, UT 84104

**Michael Behrens**
Salt Lake City, UT 84105

**Robert & Victoria Bourns**
Salt Lake City, UT 84105

**Bob Brister**
Salt Lake City, UT 84105

**Leslie D. Brown**
Salt Lake City, UT 84102

**Kathleen Cahill**
Salt Lake City, UT 84103

**Deborah Callister**
Lafayette, CA 94549

**Jim and Cheryl Fillman**
Midvale, UT 84047

**Eric Fleming**
Washington, UT 84780

**Crystal Frost**
Salt Lake City, UT

**Katherine Gardiner**
Salt Lake City, UT 84115

**Mark Gardiner**
Salt Lake City, UT 84115

**Jennifer Geerlings**
Boulder, UT 84716

**Joan Gregory**
Salt Lake City, UT 84108

**Stephen Harty**
Park City, UT 84098

**Geneen Marie Haugen**
Boulder, UT 84716

**Kristina Heintz**
Salt Lake City, UT 84132

**Polly D. Hough**
Salt Lake City, UT 84106

**Andrea Jensen**
Salt Lake City, Utah 84103

**Benjamin W. Jordan**
Salt Lake City, UT 84104

**Richard G. Keene**
Salt Lake City, UT 84104

**Elise Lazar**
Salt Lake City, UT 84102

**Robert O. Lindsley**
Salt Lake City, UT 84105
**Ben Mates**
Salt Lake City, UT 84106

**Philip Moos**
Sandy, UT 84093

**Chad Mullins**
Holladay, UT 84124

**Jason Neilson**
Salt Lake City, UT 84158

**Jamie Pleune**
Salt Lake City, UT 84103

**Mary E. Rogers**
Salt Lake City, UT 84105

**Sam Rushforth**
Orem, UT 84097

**Tim Spier**
Salt Lake City, UT 84111

**Susan H. Stewart**
Salt Lake City, UT 84104

**Bridget Stuchly**
Salt Lake City, UT 84105

**Irene Terry**
Park City, UT 84098

**Kristin Urry**
Salt Lake City, UT 84105

**Jay Vestal**
Salt Lake City, UT 84124

**Mary Beth Williams**
Salt Lake City, UT 84115

**J.N Willmore**
Salt Lake City, UT 84103