



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

***Comments From the Business Council for Sustainable Energy, Re:
Advanced Notice of Proposed Rulemaking, RIN 2590-AA53***

Dear Mr. Pollard,

The potential benefits of clean energy from building retrofits and other measures are large and well documented.¹ A significant range of building energy efficiency measures are cost-effective over the lifetime of the measures, yet the upfront investment needed for such measures remains a significant barrier to widespread implementation. Property Assessed Clean Energy (PACE) financing programs offer an effective means for localities to leverage their legal ability to levy property assessments to help property owners improve their properties' energy efficiency and install renewable energy equipment.

These comments on the Advanced Notice of Proposed Rulemaking (ANPR) begin with general comments on the issues raised by the ANPR and the July 2010 Statement by the Federal Housing Finance Agency (FHFA). Specific questions raised by the FHFA in the ANPR are subsequently addressed, with a focus on the areas on which the Business Council for Sustainable Energy is particularly qualified to comment. Several questions raised in the ANPR focus on the mechanics of individual PACE programs' operations. As the Business Council for Sustainable Energy is not an operator of PACE programs, we leave full responses to these questions to others (for example, see comments submitted from Sonoma County Energy Independence Program and Boulder County's Climate Smart Loan Program).

¹ M. Fulton (ed.). *United States Building Energy Efficiency Retrofits: Market Sizing and Financing Models*. Deutsche Bank. March 2012. http://www.dbcca.com/dbcca/EN/investment-research/investment_research_2409.jsp.

"In the United States alone, more than \$279 billion could be invested across the residential, commercial, and institutional market segments. This investment could yield more than \$1 trillion of energy savings over 10 years, equivalent to savings of approximately 30% of the annual electricity spend in the United States. If all of these retrofits were undertaken, more than 3.3 million cumulative job years of employment could be created... it would reduce U.S. [greenhouse gas] emissions by nearly 10%."

H. Choi Granade, et al. *Unlocking Energy Efficiency in the U.S. Economy*. McKinsey & Company. July 2009.

http://www.mckinsey.com/Client_Service/Electric_Power_and_Natural_Gas/Latest_thinking/Unlocking_energy_efficiency_in_the_US_economy.

"[A] holistic approach [to non-transportation energy efficiency in the U.S.] would yield gross energy savings worth more than \$1.2 trillion, well above the \$520 billion needed through 2020 for upfront investment in efficiency measures (not including program costs). Such a program is estimated to reduce end-use energy consumption in 2020 by 9.1 quadrillion BTUs, roughly 23 percent of projected demand, potentially abating up to 1.1 gigatons of greenhouse gasses annually."

Please note that as the Business Council for Sustainable Energy is a diverse coalition, not all members endorse or take positions on the issues included in these comments. The comments contained in this filing represent the position of BCSE as an organization, but not necessarily the view of any particular member with respect to any specific issue.

In General

Perhaps the most fundamental concern that the FHFA has raised is that PACE financing programs “may present significant safety and soundness concerns” to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (“the GSEs”). In short, the Business Council for Sustainable Energy asserts that PACE financing does not present a significant risk to the GSEs or their assets and may in fact reduce risk in several ways while also providing significant benefits to property owners receiving PACE financing, to the economies of participating localities, and to the environment. As discussed further in the response to *Question 2*, properties with upgrades financed through PACE assessments are likely to enjoy higher property values while their residents will enjoy lower energy costs. As such, they will present less risk to lenders.

While the FHFA frequently has referred to PACE assessments as “loans,” they are, in fact, property *assessments*. Much of the rationale offered against PACE financing could be applied to a range of traditional property tax assessments upon which municipalities depend for critical infrastructure projects. As such, the precedent set by the FHFA’s rejection of the PACE financing model raises serious concerns for other land-secured financing, e.g. for municipal sewer upgrades or seismic strengthening, which have a long history in the United States and have been consistently upheld by courts.² California’s authorization of “Geologic Hazard Abatement Districts” may be used for improvements to private property.³

In several places in the ANPR, it is stated that federal standards are unavailable for implementation. However the Department of Energy (DOE) drafted such standards when proposing a PACE pilot program in May 2010.⁴ Comparable standards are proposed in the PACE Assessment Protection Act (H.R. 2599 in the 112th Congress) and were developed in consultation with the FHFA’s counsel.

Therefore, we believe the FHFA’s July 2010 Statement is unwarranted. This rulemaking should rescind that statement and, where state legislation allows, permit resumption of residential PACE financing programs and the establishment of new programs.

Question 1

The Business Council for Sustainable Energy believes that existing safeguards developed by individual PACE programs or by state enabling legislation are sufficient to ensure the safety and soundness of mortgages that may exist on properties subject to PACE assessments. As evidence, there have been only a handful of defaults on the nearly 3,200 properties subject to PACE assessments – a substantially lower percentage than found in the general housing stock in those jurisdictions.

If further conditions or restrictions are deemed necessary, or if national standardization of PACE regulation is deemed necessary, the conditions and restrictions found in the May 2010 DOE pilot proposal or in H.R. 2599 offer reasonable compromises between risk mitigation and ease of use, ensuring that restrictions are not so onerous as to create a *de*

² S. Ranchod, J. Yung, & G. Hart. *The Constitutionality of Property Assessed Clean Energy (PACE) Programs Under Federal and California Law*. Paul, Hastings, Janofsky & Walker LLP. San Francisco. May 28, 2010.

This whitepaper offers the following footnote regarding the long history of land-secured municipal financing:

See Ronald H. Rosenberg, *The Changing Culture of American Land Use Regulation: Paying for Growth with Impact Fees*, 59 SMU L. Rev. 177, 217 n.138 (2006) (discussing the “long history” of special assessments in the United States, “reaching back to the seventeenth century,” and citing *People ex rel. Griffen [sic] v. Mayor of Brooklyn*, 4 N.Y. 419, 438 (1851) and *Osborne M. Reynolds, Jr.*, *Local Government Law* 349-54 (2d ed. 2001)); see also *German Sav. & Loan Soc’y v. Ramish* (1902) 138 Cal. 120 (upholding priority of assessment lien for street improvements over prior mortgage).

³ California Pub. Res. Code §26532. Also: Improvement Act of 1911. California Sts. & High. Code §5105.

⁴ U.S. Department of Energy. “Guidelines for Pace Financing Programs.” May 7, 2010.
http://www1.eere.energy.gov/wip/pdfs/arra_guidelines_for_pilot_pace_programs.pdf.

facto barrier to use for a typical homeowner in good financial standing (for further discussion, see the response to *Question 4*).

Question 2

PACE assessments are unlikely to pose any greater risk than a traditional property tax assessment; they may present less of a risk due to various safeguards included in the existing PACE programs.

Furthermore, ample evidence exists of the increased value of energy efficient properties and faster sale of such properties.⁵ This increases the value of a lender's collateral, mitigating risk of financial loss in case of foreclosure.

In addition, lower energy bills make a property owner better able to meet the demands of mortgage repayment. Cost savings resulting from PACE energy efficiency financing programs are generally meant to be greater than the incremental property assessment increase, meaning the property owner is left in a better financial situation from the start. This improves the ability of homeowners to make their mortgage payments. Reduced energy expenditures are also a hedge against fuel price spikes and longer-term energy cost increases that could impair the homeowner's ability to make mortgage payments.

Question 3

In regards to debt relative to a property's value, increases to a property's value resulting from PACE-financed improvements, see discussion in *Question 2*.

In regards to "The timing and nature of advancements in energy-efficiency technology" or to "The timing and nature of changes in potential homebuyer preferences," technology will no doubt advance, and preferences for home improvements may change. We believe there is a much greater financial risk for homes in which no efficiency upgrades are made due to lack of financing than for homes in which upgrades do not use the latest technologies. In addition to impact on home value, efficiency upgrades will reap immediate rewards on energy bills which would otherwise be missed if a consumer were to wait for future technological changes or out of concerns that fashions may change (and fashions certainly change more for many of the other elements included in the home appraisal process). While waiting for technology or fashion, the homeowner would be paying higher bills due to, for example, lack of insulation or a dated air conditioner that could have been upgraded with PACE financing.

Question 4

The Business Council for Sustainable Energy does not believe there to be significant risk to holders of mortgages. Existing safeguards established by individual PACE programs or by state enabling legislation are sufficient; should additional safeguards or consistent national standards be deemed necessary, the May 2010 DOE pilot guidelines or H.R. 2599 present appropriate models for such standards. However, such conditions and restrictions must not create undue barriers to homeowners who do not present undue financial risk to the programs: overly onerous eligibility requirements would act as a *de facto* barrier to PACE programs' success.

Requirements that are too stringent may exclude lower-income households who would stand to benefit most from the relevant home improvements: lower-income households typically spend a larger portion of their income on utility costs

⁵ See, for example:

B. Bloom, M. C. Nobe, & M. D. Nobe. "Valuing Green Home Designs: A Study of ENERGY STAR Homes." *Journal of Sustainable Real Estate*. 3:1. 109-126. 2011. http://www.costar.com/uploadedFiles/JOSRE/JournalPdfs/06.109_126.pdf.

A. Amado. *Capitalization of Energy Efficient Features Into Home Values in the Austin, Texas Real Estate Market*. Massachusetts Institute of Technology. June 2007. <http://dspace.mit.edu/bitstream/handle/1721.1/39848/182760581.pdf>.

R. Nevin and G. Watson. "Evidence of Rational Market Valuations for Home Energy Efficiency." *The Appraisal Journal*. October 1998. http://mpr.ub.uni-muenchen.de/35343/1/Nevin-Watson_1998_API_Market_Value_of_Home_Energy_Efficiency.pdf.

W. Pflieger, C. Perry, N. Hurst, and J. Tiller. *Market Impacts of ENERGY STAR Qualification for New Homes*. Appalachian State University. 2011. http://ncenergystar.org/sites/default/files/NCEEA_ENERGY_STAR_Market_Impact_Study.pdf.

More data exists on the commercial sector, where energy efficient buildings have been shown to enjoy higher sale and lease rates; see literature review at <http://www.buildingrating.org/content/efficiency-property-value>.

than do higher-income ones.⁶ Underwriting requirements that are too strict may confine PACE eligibility to homeowners who already enjoy plenty of liquidity and are less likely to need PACE financing than those who lack the ability to make such improvements with cash on hand.

Please also refer to the discussion under *Questions 2 and 3*.

Question 5

PACE financing offers several advantages over many other methods for financing residential energy efficiency or small-scale renewable energy measures. While PACE will not be appropriate for all residential structure energy improvements, it enjoys a number of benefits that together create a method of financing that is preferable for many. The repayment through property tax bills may make default less likely. The primary lien provides further assurance to investors and is a much safer investment than an unsecured loan, allowing for lower interest rates and better access to secondary markets; most other financing programs require subsidization to get to workable financial terms. As the financing is tied to the property, rather than to the property owner, the owner can consider payback periods that may be longer than his or her tenure at the property. For the owner, the locality, and investors that provide capital for the program, PACE presents a secure, low-risk means to support energy efficiency and renewable energy.

The primary lien and the property tax-based repayment are the main distinguishing characteristics of PACE-type programs. Certain other financing mechanisms contain somewhat similar elements: the on-bill financing and on-bill repayment models see repayments made via utility bills.⁷ On-bill models' tie to the meter (electric or gas – or theoretically water), regardless of sale of the home in some programs, is somewhat akin to PACE's property tax bill repayment. But many utilities either cannot or do not want to offer financing to their customers, or even to administer programs funded by third-parties.

Where the particulars of alternative financing mechanisms are superior to PACE in the eyes of consumers, those alternatives will enjoy greater uptake, thus avoiding the FHFA's concerns regarding PACE. However, PACE may offer superior interest rates, greater ease of use, and more security when a property is sold, and thus should be made available as an option to consumers. The fact that the PACE model was so vigorously pursued by the several existing and proposed programs prior to the GSE and FHFA letters in the summer of 2010 suggests that many localities believe this is a useful and important approach.

Question 6

Please refer to the discussion under *Question 5*. While a property's value is unlikely to benefit more from a PACE-financed improvement than from an identical improvement financed by other means, where the absence of PACE financing means that a project cannot go forward, there is no benefit at all.

Question 7

Please refer to the discussion under *Question 5*. While the environmental benefit of a PACE-financed improvement is unlikely to differ from the benefit of an identical improvement financed by other means, where the absence of PACE financing means that a project cannot go forward, there is no benefit at all.

Question 8

Please refer to the discussion under *Question 5*. The PACE model will provide, in certain situations, superior interest rates, greater ease of use, or better security if a property owner may sell the property. We believe that the availability of a better financing option will indeed spur more energy efficiency upgrades. Studies cited earlier suggest that there is

⁶ U.S. Bureau of Labor Statistics, U.S. Department of Labor. "Consumer Expenditures in 2009." May 2011. Table 1. (*n.b., not 'Table A'*)

⁷ William J. Clinton Presidential Center. 'HEAL.' <http://www.clintonpresidentialcenter.org/about-the-center/heal>. Accessed March 16, 2012.

a tremendous opportunity for cost-effective savings that is not currently being tapped. The vigorous pursuit of the PACE model by existing and proposed programs prior to the GSE and FHFA letters in the summer of 2010 suggests that many localities agree that PACE financing will meet an unmet need for consumers in their areas.

Questions 9 – 16

As the Business Council for Sustainable Energy is not directly involved in the administration or development of PACE programs, we refer FHFA to comments submitted by the several municipal PACE programs for details of specific protections and disclosures noted in *Questions 9 – 16* of the ANPR. Models for national PACE program standards, such as are found in the May 2010 DOE pilot program guidelines and H.R. 2599 also address the majority of disclosure requirements, underwriting standards, and regulatory concerns raised in these sections of the NOPR.

Contact Information

The Business Council for Sustainable Energy thanks the FHFA for the opportunity to comment on this important issue. If any clarification or further information is required, please contact Colbie Holderness (cholderness@bcse.org, 202-785-0507).

About the Business Council for Sustainable Energy

The Business Council for Sustainable Energy is a coalition of companies and trade associations from the energy efficiency, natural gas and renewable energy sectors, and also includes independent electric power producers, investor-owned utilities, public power, commercial end-users and project developers and service providers for environmental markets. For more information, please visit www.bcse.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa Jacobson". The signature is fluid and cursive, written in a professional style.

Lisa Jacobson, President
Business Council for Sustainable Energy