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State of California
DEPARTMENT OF JUSTICE



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October 12, 2009

Via Facsimile and U.S. Mail

James B. Lockhart III, Director
Federal Housing Finance Agency
1700 G Street, N.W.
Washington, DC 20552-0003
FAX: (202) 414-3823

RE: Letter of June 18, 2009 Concerning Energy Efficiency and Renewable Energy Loan Tax Assessment Programs

Dear Director Lockhart:

It has come to our attention that in a letter dated June 18, 2009, the Federal Housing Finance Agency (FHFA) expressed concern about energy efficiency and renewable energy loan tax assessment programs, also referred to as Property Assessed Clean Energy (PACE) programs.

Under a typical PACE program, a local government offers financing for energy efficiency or renewable energy projects on residential or commercial property over a 20-year period; property owners pay back the loans through special assessments or taxes that appear on their property tax bills. Under a properly designed PACE program, the annual savings on the property owner's energy bill more than offset the annual assessment or tax. The obligation to repay the loan runs with the land and is assumed by the new property owner on sale. As you likely are aware, a number of California local governments have instituted PACE programs, including the City of Berkeley, the City of Palm Desert, and Sonoma County. Many other cities and counties actively are pursuing similar programs, which are expressly authorized under State law. (See, e.g., California Assembly Bill 811 (July 21, 2008) (attached).)

FHFA's first concern is that loans made under PACE programs would take priority over existing first lien mortgages. This currently is the case for many types of special taxes and assessments, which have long been used by local governments to finance such things as new sidewalks, utility undergrounding, and hazardous waste clean up with no adverse impacts on the home mortgage market. Using a similar process for PACE merely broadens the types of projects

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that may be financed. It is our understanding that local governments in California implementing PACE programs have successfully worked with a number of lenders, including the reverse home mortgage program for seniors operated by the Department of Housing and Urban Development. The cooperation of these lenders suggests that FHFA's concerns may be overcome through proper PACE program design.

FHFA's second concern centers on "risk" to homeowners resulting from such things as increased debt; negative impact on the marketability of homes; and potential fraud. Again, PACE programs currently in operation in California establish that proper education, outreach, and oversight will ensure that these programs will result in net economic benefits to homeowners, improved property values, and full protection for homeowners (through, e.g., permitting of work and monitoring).

California has made the determination that the financing of energy efficiency and renewable energy projects, using local governments' traditional powers to assess and tax, is in the State's interest. We believe strongly that PACE programs are essential to increasing the share of renewables in California's energy supply, transforming the built environment, and creating a market for renewable energy and efficiency technologies. Accordingly, we would like the opportunity to work with FHFA to address your agency's concerns so that, together, we can foster the responsible growth of PACE programs in California.

I look forward to speaking with your staff about these matters at their earliest convenience.

Sincerely,

/s/

JANILL L. RICHARDS
Deputy Attorney General
Coordinator, Global Warming Initiatives

For EDMUND G. BROWN JR.
Attorney General

cc: Shaun Donovan, Secretary, Department of Housing and Urban Development
Steven Chu, Secretary, Department of Energy
Carol M. Browner, Director, White House Office of Energy and Climate Change Policy
Nancy Sutley, Chair, Council on Environmental Quality

Attachment (Cal. AB 811)