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9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 County of Sonoma,) CASE NO.
13)
Plaintiff,) **COMPLAINT FOR DECLARATORY**
14) **AND EQUITABLE RELIEF**
vs.)
15) (42 U.S.C. §§ 4321 *et seq*;
Federal Housing Finance Agency; Edward) 28 U.S.C. § 2201;
16 DeMarco, in his capacity as Acting Director) 5 U.S.C. §§ 551(5), 706(2).)
of Federal Housing Finance Agency; Federal)
17 Home Loan Mortgage Corporation; Charles)
E. Haldeman, Jr., in his capacity as Chief)
18 Executive Officer of Federal Home Loan)
Mortgage Corporation; Federal National)
19 Mortgage Association; Michael J. Williams,)
in his capacity as Chief Executive Officer of)
20 Federal National Mortgage Association.)
21 Defendants.)

22 **INTRODUCTION**

23 1. Pursuant to its taxing authority, the County of Sonoma operates a property
24 assessment program under which the County finances energy efficiency improvements affixed to
25 real property and imposes an assessment on such property in the amount of the cost of the
26 improvement. Despite the long-standing history of local tax assessments in California, and the
27 support for and investment in such programs by various federal agencies and the Obama
28

1 Administration, defendants Federal Housing Finance Agency, Fannie Mae, and Freddie Mac, are
2 singling out these energy efficiency assessments as creating such a risk to the home mortgage
3 industry as to justify shutting down programs like Sonoma County’s across California and the
4 nation. By this action, plaintiff County of Sonoma seeks judicial intervention to prevent this
5 arbitrary and unlawful treatment of its local assessment authority.

6 **JURISDICTION AND VENUE**

7 2. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (action arising under the
8 laws of the United States), 5 U.S.C. §§ 701-706 (Administrative Procedure Act), 12 U.S.C. §
9 1452(f) (original jurisdiction in federal district court for actions involving Freddie Mac), and 28
10 U.S.C. § 1367 (supplemental jurisdiction).

11 3. An actual controversy exists between the parties within the meaning of 28 U.S.C.
12 § 2201(a). This Court may grant declaratory relief, injunctive relief, and any additional relief
13 pursuant to 28 U.S.C. §§ 2201, 2202 and 5 U.S.C. §§ 705, 706 and under any relevant state laws
14 pursuant to its supplemental jurisdiction.

15 4. The FHFA has made a final administrative determination that is subject to review
16 under the Administrative Procedure Act (“APA”). 5 U.S.C. § 702.

17 5. The County has suffered an injury in fact, and faces imminent risk of suffering
18 irreparable injury in the future, as described in the causes of action that follow.

19 6. Venue lies in this judicial district by virtue of 28 U.S.C. § 1391(e) and Civil Local
20 Rule 3-2(d), because a substantial part of the events or omissions giving rise to the claims
21 occurred in this district.

22 **PARTIES**

23 7. Defendant Federal National Mortgage Association (“Fannie Mae”) is a federally
24 chartered, private corporation, of a type commonly referred to as a government-sponsored
25 enterprise (“GSE”). Fannie Mae facilitates the secondary market in residential mortgages.
26 Together with Freddie Mac, another GSE, Fannie Mae owns or guarantees about half the home
27 loans in the United States and California. Fannie Mae is publicly traded, has a Board of
28 Directors, and is required to report to the Securities and Exchange Commission. By statute,

1 Fannie Mae has the power to sue and be sued in both state and federal court. 12 U.S.C. §
2 1723a(a).

3 8. Defendant Michael J. Williams is the Chief Executive Officer of Fannie Mae and
4 is sued in that capacity.

5 9. Defendant Federal Home Loan Mortgage Corporation (“Freddie Mac”) is a
6 federally chartered, private corporation, and is also a GSE. Freddie Mac facilitates the secondary
7 market in residential mortgages. Together with Fannie Mae, another GSE, Freddie Mac owns or
8 guarantees about half the home loans in the United States and California. Freddie Mac is
9 publicly traded, has a Board of Directors, and is required to report to the Securities and Exchange
10 Commission. By statute, Freddie Mac has the power to sue and be sued in both state and federal
11 court. 12 U.S.C. § 1452(c).

12 10. Defendant Charles E. Haldeman, Jr. is the Chief Executive Officer of Freddie
13 Mac and is sued in that capacity.

14 11. Defendant Federal Housing Finance Agency (“FHFA”) is a federal government
15 agency created on July 30, 2008, by the Federal Housing Finance Regulatory Reform Act of
16 2008. FHFA oversees and regulates Fannie Mae, Freddie Mac, and the Federal Home Loan
17 Banks (collectively referred to as the “regulated entities”). On September 7, 2008, FHFA
18 appointed itself Conservator of Fannie Mae and Freddie Mac. As of June 2008, the combined
19 debt and obligations of the regulated entities totaled \$6.6 trillion, exceeding the total publicly
20 held debt of the United States by \$1.3 trillion.

21 12. Defendant Edward DeMarco is the Acting Director of the Federal Housing
22 Finance Agency and is sued in that capacity. By statute, he is entrusted with general supervisory
23 and regulatory authority over the regulated entities and over the Office of Finance, expressly to
24 ensure that the regulated entities operate in a safe and sound manner. His duties are to oversee
25 the prudential operations of each regulated entity and to ensure that each regulated entity
26 operates in a safe and sound manner.

27 13. Plaintiff County of Sonoma (“County”) is a political subdivision of the State of
28 California duly organized and validly existing under and pursuant to the Constitution and laws of

1 the State of California, with its County Seat and principal office and place of business in Santa
2 Rosa, County of Sonoma, State of California. A five-member, independently elected Board of
3 Supervisors governs the County.

4 **ASSESSMENTS IN CALIFORNIA/PACE PROGRAMS**

5 14. The State of California grants cities and counties taxing authority, including the
6 power to levy assessments for a public purpose. Both taxes and assessments are levied under the
7 sovereign power of the state. Assessments can be imposed after constitutional and statutory
8 procedures are satisfied where the assessment furthers a public purpose, and there is a special
9 benefit to the assessed property.

10 15. For well over 100 years, local governments in California, including the County of
11 Sonoma, have used their assessment powers to finance improvements that serve a public
12 purpose, such as the paving of roads, sidewalk improvements, and the undergrounding of
13 utilities. Under well-established California law, privately-owned improvements, e.g., seismic
14 and fire-related improvements, can also serve a valid public purpose and be financed through the
15 levying of assessments.

16 16. Under longstanding California law, assessments create liens that have priority
17 over mortgages. However, under state law, these liens need not be satisfied in full when the
18 property is transferred, sold, or foreclosed upon, but rather only the amount of the assessment
19 that is delinquent is due at the time of the transfer, sale or foreclosure. The remainder of the
20 assessment remains as a lien on the property, with amounts due annually as part of the property
21 taxes until the assessment is paid in full.

22 17. Through various laws, California has authorized local governments to use their
23 assessment powers to finance real property improvements that reduce energy and water use and
24 provide clean power. These assessment programs are commonly referred to in California as
25 Property Assessed Clean Energy (“PACE”) Programs.

26 18. Under California law, assessments imposed under a PACE program operate in the
27 same way as all other assessments: the assessment is levied for a public purpose and the
28 improvement is paid for out of public funds; the funds are raised by the sale of bonds; the

1 assessment revenue is pledged to repay the bonds; and the assessments have the same priority,
2 and are collected at the same time and in the same manner, as property taxes.

3 19. The White House highlighted PACE in its “Recovery Through Retrofit” initiative
4 in October 2009. In the accompanying report, the White House noted the benefits of PACE:
5 “Property tax or municipal energy financing allows the costs of retrofits to be added to a
6 homeowner’s property tax bill, with monthly payments generally lower than utility bill savings.
7 This arrangement attaches the costs of the energy retrofit to the property, not the individual,
8 eliminating uncertainty about recovering the cost of the improvements if the property is sold.”
9 The White House further stated that “federal departments and Agencies will work in partnership
10 with state and local governments to establish standardized underwriting criteria and safeguards to
11 protect consumers and minimize financial risks to the homeowners and mortgage lenders.”

12 20. On October 18, 2009, the White House released its “Policy Framework for PACE
13 Financing Programs,” in which Vice President Joseph Biden announced support “for the use of
14 federal funds for pilot programs of PACE financing to overcome barriers for families who wish
15 to invest in energy efficiency and renewable energy improvements.”

16 21. The Department of Housing and Urban Development (“HUD”) and the
17 Department of Energy (“DOE”) expressly identified PACE as eligible for receipt of \$150 million
18 in federal stimulus funds. Through the American Recovery and Reinvestment Act’s Energy
19 Efficiency and Conservation Block Grant Program, DOE also awarded over \$300 million
20 directly to larger California local governments, and an additional \$35 million for disbursement
21 through the California Energy Commission (“CEC”) to smaller local governments. The
22 Recovery Act also funded the State Energy Program, under which California received more than
23 \$226 million. PACE programs are a necessary component of any complete efficiency retrofit
24 program.

25 SONOMA COUNTY’S PACE PROGRAM

26 22. Through the passage of Assembly Bill 811 in July 2008, the California legislature
27 authorized cities and counties to establish voluntary contractual assessment programs to fund an
28 array of conservation and renewable energy projects proposed by property owners. Calif. Streets

1 and Highways Code § 5898.12(b). The purpose of AB 811 was to encourage the installation of
2 solar power, wind power, and other alternative sources of energy and energy efficiency
3 improvements by making them more affordable for businesses and residential homeowners. The
4 legislature anticipated that AB 811’s promotion of energy efficiency would save “millions of
5 kilowatthours,” jump-start the green technology industry, and create thousands of new green
6 technology jobs in the State. Stats. 2008, c. 159, § 7 (AB 811).

7 23. Immediately after passage of AB 811, County’s Board of Supervisors directed
8 staff to explore the possibility of an AB 811 PACE Program in Sonoma County. After staff
9 presented a feasibility analysis, on March 3, 2009 the Sonoma County Board of Supervisors
10 adopted a Resolution of Intention to establish a PACE program. The County’s program is called
11 the Sonoma County Energy Independence Program (“SCEIP”).

12 24. The Board found that a public purpose will be served by a contractual assessment
13 program pursuant to which the County of Sonoma finances the installation of distributed
14 generation renewable energy sources and energy efficiency improvements that are permanently
15 fixed to residential commercial, industrial, or other real property.

16 25. On March 25, 2009, after a public hearing, the Board of Supervisors authorized
17 the implementation of SCEIP, and SCEIP opened its doors for business on the same day.

18 26. The goal of SCEIP is to help property owners of improved real property make
19 principled investments in the long-term health of the local, state, and national economy and
20 global environment by providing a long-term financing mechanism for renewable energy and
21 energy and water conservation improvements.

22 27. SCEIP is also an essential component of the County’s greenhouse gas reduction
23 goal, which is to reduce greenhouse gas emissions 25 percent below 1990 levels by 2015. Lower
24 energy use translates directly into reduced greenhouse gas emissions. Reducing water use also
25 translates into reduced greenhouse gas emissions since water related energy use consumes
26 approximately 20 percent of California’s electricity and 88 billion gallons of diesel fuel every
27 year.

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1 28. Since SCEIP opened its doors, it has financed over \$34.5 million in approved
2 contracts supporting over 1,000 energy-efficiency projects. These projects have produced
3 hundreds of local construction jobs and reduced local greenhouse gas reduction by
4 approximately 1,900 tons per year.

5 29. Property owners interested in the SCEIP program must meet certain eligibility
6 requirements and complete an application. In order to be eligible, applicants must be the record
7 owners of the property, current in their mortgage payments, current in their property tax
8 payments, not have been in bankruptcy for at least the past year, and have no involuntary liens
9 (such as delinquent tax liens) against the property.

10 30. In addition, the proposed project energy efficiency project must meet certain
11 criteria. For instance, the proposed improvements cannot cost more than 10 percent of the value
12 of the property. The debt on the property, plus the amount proposed as financing, cannot exceed
13 the market value of the property, plus the cost of the improvements. The amount requested for
14 disbursement must be net of any expected direct cash rebates. Improvements must be qualified
15 improvements as specified on County’s list of eligible improvements, or must be approved by
16 County’s technical committee as a “custom” improvement that will result in cost effective
17 energy efficiency, and the expected life of the improvements should equal or exceed the term of
18 the assessment.

19 31. In an effort to resolve the current controversy over PACE programs, the DOE
20 issued Guidelines for Pilot PACE Financing Programs on May 7, 2010 to “help ensure prudent
21 financing practices.” SCEIP already follows most of the DOE guidelines. However, DOE
22 recommends the additional requirement that improvements have an expected savings to
23 investment ratio of greater than one. This ratio would be assessed by specially trained auditors,
24 who could also recommend the most cost effective efficiency measures for a property. Sonoma
25 County intends to implement this requirement, and has applied for and was awarded a grant from
26 the California Energy Commission to subsidize the cost of a household audit (sometimes over
27 \$600). Receipt of this grant is now in jeopardy as a result of defendants’ actions.

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1 mortgage holder subject to assessments that can attain priority is not in violation of the Uniform
2 Security Instruments (including the California Deed of Trust).

3 37. Since its inception and in its capacity as Conservator of Fannie Mae and Freddie
4 Mac, FHFA has also accepted and agreed that in California assessments can attain priority over
5 mortgages, and that a mortgage holder subject to assessments that can attain priority is not in
6 violation of the Uniform Security Instruments (including the California Deed of Trust).

7 38. By this acceptance of local tax assessments and their priority lien status,
8 defendants have acknowledged and accepted the police power of local government to impose
9 taxes and assessments for the common good, and have acknowledged and accepted that such
10 assessments do not pose unusual and difficult risk management challenges for lenders, servicers
11 and mortgage securities investors.

12 39. However, on May 5, 2010, Fannie Mae and Freddie Mac each unexpectedly
13 issued a “Lender Letter” directed to the home mortgage industry in which they declared that
14 PACE assessments are loans, and, because they have first lien priority over previously recorded
15 mortgages, are possibly prohibited by the terms of the Fannie Mae/Freddie Mac Uniform
16 Security Instruments. Fannie Mae’s Lender Letter is attached to this Complaint as Exhibit A.

17 40. Freddie Mac’s May 5, 2010, Lender Letter declared that “an energy-related lien”
18 may not be senior to a mortgage delivered to Freddie Mac, and encouraged lenders in
19 jurisdictions that have an “energy loan program” to determine whether a “first priority lien” is
20 permitted. Freddie Mac’s Lender Letter is attached to this Complaint as Exhibit B.

21 41. On July 6, 2010, FHFA issued its own statement on PACE Programs, reflecting
22 its determination that “energy retrofit lending programs present significant safety and soundness
23 concerns that must be addressed by” the regulated entities. FHFA’s Statement is attached to this
24 Complaint as Exhibit C.

25 42. Contrary to the evidence, and mischaracterizing PACE assessments as “loans,”
26 FHFA reasoned: “First liens established by PACE loans are unlike routine tax assessments and
27 pose unusual and difficult risk management challenges for lenders, services and mortgage
28 securities investors. The size and duration of PACE loans exceed typical local tax programs and

1 do not have the traditional community benefits associated with taxing initiatives.” The evidence
2 in fact shows that typical assessments last from 20 to 40 years, and range from small amounts to
3 amounts that equal or exceed the typical SCEIP assessment.

4 43. Contrary to the evidence, and again mischaracterizing PACE assessments as
5 “loans,” FHFA stated that “[f]irst liens for such loans represent a key alteration of traditional
6 mortgage lending practice” and “are not essential for successful programs to spur energy
7 conservation.” The evidence in fact shows that first lien status for property assessments has been
8 commonplace for over a century. Further, the evidence shows that SCEIP was embraced by the
9 community, and has resulted in significant greenhouse gas reduction.

10 44. In its statement, FHFA “directed” its regulated entities to undertake the following
11 actions: 1) adjust loan-to-value ratios to reflect the maximum permissible PACE “loan” amount
12 available to borrowers in PACE jurisdictions; 2) ensure that loan covenants require
13 approval/consent for any PACE “loan;” 3) tighten borrower debt-to-income ratios to account for
14 additional obligations associated with possible future PACE “loans;” and 4) ensure that
15 mortgages on properties in a jurisdiction offering PACE-like programs satisfy all applicable
16 federal and state lending regulations and guidance.

17 45. FHFA also confirmed the interpretation of Fannie Mae and Freddie Mac that
18 PACE “first liens” run contrary to the Uniform Security Instrument, although it directed Fannie
19 Mae and Freddie Mac to waive their prohibitions against such senior liens for any homeowner
20 who obtained a PACE or PACE-like “loan” prior to July 6, 2010.

21 46. Defendants’ actions have adversely affected SCEIP and Sonoma County program
22 participants. Among other things, since Fannie Mae and Freddie Mac issued their Lender Letters
23 in May, several property owners participating in SCEIP have been unable to refinance or transfer
24 their property without paying off the amount financed in full, notwithstanding that the property
25 owners were current in their SCEIP payments. Before the Lender Letters, 22 participants in
26 SCEIP were able to refinance without difficulty. Since FHFA’s issuance of its July 6, 2010
27 statement, 21 applicants have withdrawn their applications from SCEIP. Defendants’ actions
28

1 create substantial uncertainty for SCEIP participants going forward and are likely to prevent
2 future participation in the program by many county property owners.

3 47. By treating SCEIP assessments differently from other local assessments, in
4 violation of California and federal law, defendants are severely hampering County's efforts to
5 assist homeowners and businesses within the County to reduce their energy and water use, help
6 drive the County's economy, and create significant numbers of skilled, stable and well-paying
7 jobs.

8 48. By treating SCEIP assessments differently from other local assessments in
9 violation of California and federal law, defendants FHFA, Freddie Mac and Fannie Mae are
10 severely hampering the County's ability to meet its greenhouse gas reduction goals and, in turn,
11 comply with state law.

12 49. By treating SCEIP assessments differently from other County assessments in
13 violation of California and federal law, defendants FHFA, Freddie Mac and Fannie Mae are
14 interfering with the County's taxing authority, severely hampering the County's ability to tax its
15 residents for a legitimate public purpose, a power vested in the County by the federal and state
16 constitutions.

17 50. By treating SCEIP assessments differently from other County assessments in
18 violation of California and federal law, defendants FHFA, Freddie Mac and Fannie Mae have
19 created uncertainty in the bond market, interfering with County's ability to refund the SCEIP
20 bonds at an interest rate that would be beneficial to property owners.

21 **FIRST CAUSE OF ACTION**

22 (Administrative Procedure Act, 5 U.S.C. § 706(2); FHFA only)

23 51. County realleges and incorporates by reference the allegations of the preceding
24 paragraphs.

25 52. The FHFA has failed to examine relevant data and articulate a satisfactory
26 explanation for its action, including, but not limited to, articulating a rational connection between
27 the facts and its determination that SCEIP assessments, unlike other assessments, affect the
28 safety and soundness of Fannie Mae and Freddie Mac.

1 **THIRD CAUSE OF ACTION**

2 (Declaratory Relief; All Defendants)

3 61. County realleges and incorporates by reference the allegations of the preceding
4 paragraphs.

5 62. Under 28 U.S.C. § 2201 and Cal. Code of Civ. Proc. § 1060, County seeks a
6 declaration of legal rights and duties with respect to Defendants’ characterization of SCEIP
7 assessments as “loans” as opposed to “assessments.” More specifically, County seeks a
8 declaration that:

- 9 a. SCEIP operates through assessments, not loans;
- 10 b. Assessments receive lien priority under California law;
- 11 c. Lien priority for assessments does not violate and does not run contrary to
12 Fannie Mae’s or Freddie Mac’s Uniform Security Instruments;
- 13 d. The GSE’s May 5, 2010 Lender Letters, and FHFA’s July 6, 2010
14 Statement mischaracterize California law and the operations of GSE’s
15 own Uniform Security Instruments.

16 63. Without prompt judicial declaration, SCEIP will be substantially reduced or
17 eliminated, to the detriment of current and prospective SCEIP participants, the many local
18 industries that serve SCEIP, and the County’s ability to achieve its greenhouse gas reduction and
19 water conservation goals.

20 **FOURTH CAUSE OF ACTION**

21 (Interference with Prospective Contractual Relations;

22 Fannie Mae and Freddie Mac)

23 64. County realleges and incorporates by reference the allegations of the preceding
24 paragraphs.

25 65. Sonoma County through its SCEIP program has prospective contractual relations
26 with its residents that would result in economic benefit to the County in the form of a healthy
27 local economy, a reduction in greenhouse gas emissions, and greater water conservation.
28

1 reviewing court shall hold unlawful and set aside agency action found to be arbitrary, capricious,
2 or otherwise not in accordance with the law, and compel agency action illegally withheld or
3 unreasonably delayed.

4 74. FHFA's failure to comply with NEPA and its supporting regulations constitutes
5 arbitrary and capricious agency action, is an abuse of discretion, and is contrary to law and to
6 procedures required by law. 5 U.S.C. § 706(2)(A), (D).

7 **PRAYER**

8 For the foregoing reasons, County prays for judgment as follows:

9 1. That the Court declare that under California law, SCEIP financing is
10 accomplished through assessments and not "loans," and nothing in Fannie Mae's or Freddie
11 Mac's Uniform Security Instruments, as reflected in Fannie Mae's and Freddie Mac's
12 longstanding business practices, prohibits participation in SCEIP;

13 2. That the Court issue a temporary restraining order, preliminary injunction, and
14 permanent injunction restraining and enjoining Fannie Mae or Freddie Mac from taking any
15 adverse action against any mortgagee who is participating, or may participate, in SCEIP, or other
16 action that has the effect of chilling participation in SCEIP;

17 3. That Defendants Freddie Mac and Fannie Mae and all persons who act in concert
18 with them be permanently enjoined from interfering with County's PACE program, SCEIP,
19 including, but not limited to, the acts and practices alleged in this Complaint.

20 4. That the Court issue a declaratory judgment that Defendant FHFA violated NEPA
21 and the APA by acting arbitrarily, capriciously, in an abuse of discretion, not in accordance with
22 law and/or without observance of proper procedures required by law by failing to prepare
23 appropriate environmental review before issuing its July 6, 2010 Statement and that the Court set
24 aside FHFA's July 6, 2010 Statement;

25 5. That the Court issue a declaratory judgment that the FHFA violated the APA by
26 arbitrarily and capriciously treating SCEIP assessments as "loans" and by directing the regulated
27 entities to take actions against SCEIP participants.

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- 6. That the Court issue a mandatory injunction compelling the FHFA to set aside its statement issued on July 6, 2010.
- 7. That the Court award the costs of suit incurred; and
- 8. That the Court award such other and further relief as it may deem proper.

DATED: July 26, 2010.

STEVEN M. WOODSIDE, County Counsel

By: /s/ Phyllis C. Gallagher
Phyllis C. Gallagher
Deputy County Counsel

EXHIBIT A

Lender Letter LL-2010-06**May 5, 2010****TO: All Fannie Mae Single-Family Sellers and Servicers****Property Assessed Clean Energy Loans**

Fannie Mae has received a number of questions from seller-servicers regarding government-sponsored energy loans, sometimes referred to as Property Assessed Clean Energy (PACE) loans. PACE loans generally have automatic first lien priority over previously recorded mortgages. The terms of the Fannie Mae/Freddie Mac Uniform Security Instruments prohibit loans that have senior lien status to a mortgage. As PACE programs progress through the experimental phase and beyond, Fannie Mae will issue additional guidance to lenders as may be needed from time to time.

Fannie Mae supports energy-efficiency initiatives, and is willing to engage with federal and state agencies as they consider sustainable programs to facilitate lending for energy-efficiency home retrofits, while preserving the status of mortgage loans originated as first liens.

Questions should be directed to Resource_Center@fanniemae.com with the subject line "PACE." Lenders may also wish to consult with their federal regulators, who share concerns about PACE programs.

Marianne E. Sullivan
Senior Vice President
Single-Family Chief Risk Officer

EXHIBIT B

TO: Freddie Mac Seller/Serviceers

May 5, 2010

SUBJECT: First Lien Mortgages and Energy Efficient Loans

Several states have recently enacted laws that authorize localities to create new energy efficient loan programs that generally rely on the placement of a first priority lien to secure energy efficient home improvements. Programs under these laws are sometimes referred to as Energy Loan Tax Assessment Programs or Property Assessed Clean Energy programs. Freddie Mac has begun to receive questions about these new energy loan programs.

The purpose of this Industry Letter is to remind Seller/Serviceers that an energy-related lien may not be senior to any Mortgage delivered to Freddie Mac. Seller/Serviceers should determine whether a state or locality in which they originate mortgages has an energy loan program, and whether a first priority lien is permitted. Freddie Mac will provide additional guidance in the event that these energy loan programs move beyond the experimental stage.

Freddie Mac supports the goal of encouraging responsible financing of energy efficient and renewable energy home improvements. We continue to work with federal and state agencies and with Seller/Serviceers on initiatives for developing workable energy retrofit programs.

CONCLUSION

Please contact your Freddie Mac representative or call (800) FREDDIE if you have any questions. Seller/Serviceers may also wish to contact their federal regulators, who share concerns about energy liens.

Sincerely,



Patricia J. McClung
Vice President
Offerings Management

EXHIBIT C

FEDERAL HOUSING FINANCE AGENCY



STATEMENT

For Immediate Release
July 6, 2010

Contact: Corinne Russell (202) 414-6921
Stefanie Mullin (202) 414-6376

FHFA Statement on Certain Energy Retrofit Loan Programs

After careful review and over a year of working with federal and state government agencies, the Federal Housing Finance Agency (FHFA) has determined that certain energy retrofit lending programs present significant safety and soundness concerns that must be addressed by Fannie Mae, Freddie Mac and the Federal Home Loan Banks. Specifically, programs denominated as Property Assessed Clean Energy (PACE) seek to foster lending for retrofits of residential or commercial properties through a county or city's tax assessment regime. Under most of these programs, such loans acquire a priority lien over existing mortgages, though certain states have chosen not to adopt such priority positions for their loans.

First liens established by PACE loans are unlike routine tax assessments and pose unusual and difficult risk management challenges for lenders, servicers and mortgage securities investors. The size and duration of PACE loans exceed typical local tax programs and do not have the traditional community benefits associated with taxing initiatives.

FHFA urged state and local governments to reconsider these programs and continues to call for a pause in such programs so concerns can be addressed. First liens for such loans represent a key alteration of traditional mortgage lending practice. They present significant risk to lenders and secondary market entities, may alter valuations for mortgage-backed securities and are not essential for successful programs to spur energy conservation.

While the first lien position offered in most PACE programs minimizes credit risk for investors funding the programs, it alters traditional lending priorities. Underwriting for PACE programs results in collateral-based lending rather than lending based upon ability-to-pay, the absence of Truth-in-Lending Act and other consumer protections, and uncertainty as to whether the home improvements actually produce meaningful reductions in energy consumption.

Efforts are just underway to develop underwriting and consumer protection standards as well as energy retrofit standards that are critical for homeowners and lenders to understand the risks and rewards of any energy retrofit lending program. However, first liens that disrupt a fragile housing finance market and long-standing lending priorities, the absence of robust underwriting standards to protect homeowners and the lack of energy retrofit standards to assist homeowners, appraisers, inspectors and lenders determine the value of retrofit products combine to raise safety and soundness concerns.

On May 5, 2010, Fannie Mae and Freddie Mac alerted their seller-servicers to gain an understanding of whether there are existing or prospective PACE or PACE-like programs in jurisdictions where they do business, to be aware that programs with first liens run contrary to the Fannie Mae-Freddie Mac Uniform Security Instrument and that the Enterprises would provide additional guidance should the programs move beyond the experimental stage. Those lender letters remain in effect.

Today, FHFA is directing Fannie Mae, Freddie Mac and the Federal Home Loan Banks to undertake the following prudential actions:

1. For any homeowner who obtained a PACE or PACE-like loan with a priority first lien prior to this date, FHFA is directing Fannie Mae and Freddie Mac to waive their Uniform Security Instrument prohibitions against such senior liens.
2. In addressing PACE programs with first liens, Fannie Mae and Freddie Mac should undertake actions that protect their safe and sound operations. These include, but are not limited to:
 - Adjusting loan-to-value ratios to reflect the maximum permissible PACE loan amount available to borrowers in PACE jurisdictions;
 - Ensuring that loan covenants require approval/consent for any PACE loan;
 - Tightening borrower debt-to-income ratios to account for additional obligations associated with possible future PACE loans;
 - Ensuring that mortgages on properties in a jurisdiction offering PACE-like programs satisfy all applicable federal and state lending regulations and guidance.

Fannie Mae and Freddie Mac should issue additional guidance as needed.

3. The Federal Home Loan Banks are directed to review their collateral policies in order to assure that pledged collateral is not adversely affected by energy retrofit programs that include first liens.

Nothing in this Statement affects the normal underwriting programs of the regulated entities or their dealings with PACE programs that do not have a senior lien priority. Further, nothing in these directions to the regulated entities affects in any way underwriting related to traditional tax programs, but is focused solely on senior lien PACE lending initiatives.

FHFA recognizes that PACE and PACE-like programs pose additional lending challenges, but also represent serious efforts to reduce energy consumption. FHFA remains committed to working with federal, state, and local government agencies to develop and implement energy retrofit lending programs with appropriate underwriting guidelines and consumer protection standards. FHFA will also continue to encourage the establishment of energy efficiency standards to support such programs.

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The Federal Housing Finance Agency regulates Fannie Mae, Freddie Mac and the 12 Federal Home Loan Banks. These government-sponsored enterprises provide more than \$5.9 trillion in funding for the U.S. mortgage markets and financial institutions.