OFFICE OF
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TACY ONETO ROUEN, AUDITOR-CONTROLLER

MEMO

To: Chuck Iley, County Administrative Officer

From: Tacy Oneto Rouen, Auditor-Controller TOR

Date: February 10, 2017

Subject: **Recommendation Regarding the HERO Program's Request to Offer the PACE Program to Residents of Unincorporated Amador County**

The Auditor's Office has concerns about PACE Programs, and we have addressed our concerns in detail at several previous Board of Supervisors meetings. Below is a brief listing of our main concerns:

1) The PACE Programs rely on repayment of *private company loans* through collection on the County's Tax Roll. In essence, County Tax Collectors become loan collectors for private companies.

2) When placed on the Tax Roll, the HERO Program PACE Assessments take only a "limited subordination" positon, not a true subordination position under other loans.

3) There is still a lack of consumer protection safeguards in place.

Consumer protection remains our greatest concern. Even though new legislation was passed last Fall, there are still not enough consumer protection safeguards to protect the public. For example, the PACE Programs do not require any written verification or hard credit checks on a consumer's ability to pay back the loan. This puts our citizens at risk of signing a loan agreement that they truly cannot afford.

Ultimately, the Auditor-Controller's Office cannot in good faith recommend that the Amador County Board of Supervisors authorize the HERO Program to offer the PACE Program to residents of unincorporated Amador County at this time.

OFFICE OF THE
AMADOR COUNTY TREASURER - TAX COLLECTOR

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MEMORANDUM

TO : MR. RICHARD M. FORSTER, CHAIRMAN, AMADOR COUNTY BOARD OF SUPERVISORS
: MR. CHUCK ILEY, COUNTY ADMINISTRATIVE OFFICER

FROM : MICHAEL E. RYAN, TREASURER/TAX COLLECTOR MER

DATE : FEBRUARY 10, 2017

RE : PROPERTY ASSESSED CLEAN ENERGY PROGRAM (PACE), ITEM 7., BOARD AGENDA, FEBRUARY 14, 2017

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I have addressed the Board of Supervisors on two previous occasions regarding PACE programs, the most recent being in August 2016 (see copy of Memorandum dated August 4, 2016 attached). On both occasions I have recommended that the Board not adopt these programs for the unincorporated areas of Amador County. Although there have been some recent improvements in PACE programs, both legislatively and operationally, I still cannot recommend approval of such programs.

Without rehashing details addressed in my Memo of August 4, 2016, I still have serious concerns with PACE programs and the adoption of these programs by public entities. These concerns can be summarized as follows:

1) PACE programs are the only instances where the County Tax Collector collects funds (i.e., loan payments) for a private entity on the County Tax Roll;

2) Although recent legislative actions (AB2693, AB 2618) have improved the disclosure and qualification requirements for these loans, they do not address what I feel is a major flaw with PACE-loans are based on the owner's equity in the property, not on the owner's ability to repay the loan. Even with these legislative changes, the disclosure and qualification requirements for PACE are nowhere near those required for a typical home loan.

3) The lack of government or regulatory oversight of PACE programs. These programs are essentially self-regulating.

4) Even though recently-utilized limited subordination agreements have addressed some of the issues regarding priority of PACE loans as opposed to conventional home loans, these agreements are very new and may not completely address the priority issue.

OFFICE OF THE
AMADOR COUNTY TREASURER - TAX COLLECTOR

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MEMORANDUM

TO	:	MR. JOHN PLASSE, CHAIRMAN, AMADOR COUNTY BOARD OF SUPERVISORS
	:	MR. CHUCK ILEY, COUNTY ADMINISTRATIVE OFFICER
FROM	:	MICHAEL E. RYAN, TREASURER/TAX COLLECTOR
DATE	:	AUGUST 4, 2016
RE	:	RECOMMENDATION REGARDING PACE PROGRAM

==

On July 19, 2016, I received an email from Chuck Iley, Amador County CAO, stating that the Chairman of the Board of Supervisors had asked for recommendations from myself, as County Treasurer/Tax Collector, and from County Auditor Tacy Oneto Rouen, regarding the PACE Program.

As I responded to Mr. Iley by email on this same date, I still have the same concerns about PACE as I did when this subject was last discussed with the Board of Supervisors (June 9, 2015).

To refresh your memory, I have three main areas of concern with the PACE Programs: (1) That the programs rely on repayment of private company loans through collection on the County Tax Roll; (2) The lack of oversight, the lack of disclosure, and the lack of consumer protections typically provided with these loans; and, (3) The fact that PACE loans, once placed on the County Tax Roll, acquire the same lien priority as County taxes, effectively giving PACE loans legal priority over other types of loans, even pre-existing real estate loans.

As stated above, PACE loan payments are collected as direct charges on the County Tax Roll. This is the only instance of which I am aware, where the County Tax Roll is used to collect, apportion, and remit funds for a private company (as is most often the case with PACE loans). As you are aware, the City of Ione (and, I believe, the City of Jackson) have already passed PACE resolutions (without requesting any input from this office, I might add). I took the liberty of researching the County Recorder's records and found one (there are others) Notice of Special Tax Lien that was recently recorded evidencing a PACE loan on a residential property in Ione. According to this recorded document, the PACE

assessment on this particular property has the potential to raise the annual property taxes owed from approximately $2,300.00 (2015-16 taxes), to nearly $8,400.00, which is a very substantial increase. From my limited inquiry, these types of potential increases appear to be common. Are taxpayers appropriately advised of this? These large assessments raise another serious concern. There is a very real possibility that the County Tax Collector will be required to eventually sell property with PACE loans at tax sale to collect delinquent property taxes. The Tax Collector would then be required to establish a minimum bid that would include the PACE loan amounts due. If the Tax Collector is unable to sell a parcel due to a resulting high minimum bid, the minimum bid would have to be reduced to a point where the property would sell. Would any shortage that existed have to be covered by the County's Tax Loss Reserve Fund?

I recently attended the annual conference of the California Association of County Treasurers and Tax Collectors. One of the items on the Agenda pertained to PACE Programs. Almost universally, concerns were expressed by county tax collectors as to the lack of oversight, the lack of required disclosure, and the lack of consumer protections available with PACE loans. As further evidence of these types of concerns, I refer to a June 9, 2016 Statement presented to a California State Assembly Committee by Alfred M. Pollard, General Counsel of the Federal Housing Finance Agency (FHFA) (copy enclosed). Mr. Pollard states that "the (PACE) programs in California and elsewhere look principally to the value of the property to support a loan, rather than the ability of a homeowner to repay, as was mandated in the Dodd Frank Wall Street Reform and Consumer Protection Act of 2010". This statement, by itself, is very disconcerting. But he further states that "consumer protections are narrow-generally limited to basic underwriting for a loan such as that a borrower must not have filed for bankruptcy, not be behind on a mortgage or been delinquent on property taxes. Beyond that, it is up to localities to determine what protections to afford consumers. Even where protections exist, they are not uniform and have no enforcement agency behind them." Mr. Pollard goes on to state that "PACE programs fundamentally do not have comprehensive regulatory supervision. PACE programs have no required uniformity. PACE programs in many, but not all, instances are administered by third parties that do not follow the same consumer protection requirements applicable to residential mortgage lenders." A small number of larger counties, such as Los Angeles County, have instituted their own PACE programs in an attempt to alleviate some of these concerns and to provide additional consumer protection disclosures for PACE loans (see copy of LA County PACE insert enclosed).

A third area of concern is the so-called "super priority" of the PACE loans. FHFA also spoke to this matter in the Statement to the California Assembly Committee. "FHFA has made it clear that the FHLBanks should undertake such actions as they deem appropriate to protect collateral they acquire and that Fannie Mae and Freddie Mac should neither purchase nor refinance mortgages with PACE loans attached." Essentially, this means that if a property owner with a PACE loan refinances his or her property, or sells the property, lenders or prospective buyers may require that the PACE loan be paid in full. Furthermore, entering into a PACE loan without the consent of an existing lender may be considered an event of default which could result in a demand for full payment of an existing residential mortgage or a cause for foreclosure of that mortgage.

Several of these concerns were expressed in a recent (July 15, 2016) article published in the Amador Ledger Dispatch (see copy enclosed).

Given these concerns, and potentially others, I cannot, in good conscience, recommend that the Amador County Board of Supervisors authorize a PACE program for Amador County, as such programs presently exist. I believe that other, less concerning, types of financing currently exist which allow homeowners to make energy efficient improvements, such as solar installations, to their property.

STATEMENT

before
the
California Legislature
Assembly Banking and Finance Committee and Assembly Local Government Committee

Keeping Up with PACE:
A Joint Oversight Hearing on Residential Property Assessed Clean Energy (PACE) Programs

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency

June 9, 2016

Chair Dababneh, Chair Eggman, Vice Chair Allen, Vice Chair Waldron, Committee Members, in response to your request for input on Property Assessed Clean Energy (PACE) programs, I am pleased to have the opportunity to address this Joint Oversight Hearing. My name is Alfred Pollard and I serve as General Counsel of the Federal Housing Finance Agency (FHFA). Our agency oversees the eleven Federal Home Loan Banks (FHLBanks), which accept mortgage collateral in exchange for advances to financial institutions in the primary mortgage market, and Fannie Mae and Freddie Mac (the Enterprises), which purchase and also securitize mortgages thereby providing resources to the primary mortgage market. To facilitate these remarks and because of their role in purchasing first-lien mortgages, I will focus on Freddie Mac and Fannie Mae.

As you know, the Enterprises are in federal conservatorships and have received more than $187 billion in federal government support to remain in operation and support the primary mortgage market. During the conservatorships, the Enterprises have refinanced over 22 million mortgages into lower interest rates, providing more affordable home loans and they have undertaken over 3.6 million foreclosure prevention actions through various programs to keep homeowners in their homes.

Oversight Hearing

Today's hearing is about residential energy retrofit lending. In short, this means the financing for a product, not the retrofit product itself. While the product is timely and important, the financing method is at the core of today's discussion. Whether funded by a PACE loan or a second-lien loan, the energy efficiency product would be the same. The financing method has significance for homeowners, communities, small lenders that hold loans in portfolio, the FHLBanks, the Enterprises and those who own mortgage-backed securities, such as pension funds. In 2009-2010, as you may know, FHFA and the bank regulators along with major financial institution trade groups

expressed concerns with the PACE model as the financing mechanism for lending programs. As conservator for the Enterprises, FHFA has stated it cannot support first-lien PACE programs for Enterprise participation and I hope these remarks assist in understanding why that remains FHFA's position.

Energy Efficiency Financing

FHFA supports energy efficiency efforts by homeowners and home purchasers. Later in an attachment to this presentation, I address, in detail, FHFA's efforts and those of the entities the Agency regulates that support energy efficiency improvements and energy efficiency financing.

As noted, the topic is what methods should be employed to finance retrofitting a home with energy efficient products, with a primary, though not exclusive, focus on solar products. PACE initiatives contemplate state legislation to authorize counties and municipalities to administer programs to finance homeowner retrofits. By working through the counties, PACE programs seek to secure a first-lien position for their loans as this would prove attractive to investors. With a few exceptions, counties and cities that have undertaken PACE programs engage outside firms to administer them.

The programs in California and elsewhere look principally to the value of property to support a loan, rather than the ability of a homeowner to repay, as was mandated in the Dodd Frank Wall Street Reform and Consumer Protection Act of 2010. The focus on ability to repay, by no means a new concept, aimed to correct the asset-based lending that contributed to the financial crisis that began in 2007. In addition to undertaking asset-based lending, the counties or municipalities may charge up to 10 percent for administrative fees and other charges are imposed by administrators; these numbers are generally well beyond what a second-lien mortgage loan would contemplate. Total authorized amounts for loans vary by state from 10 percent or more of assessed home values.

Stated consumer protections are narrow— generally limited to basic underwriting for a loan such as that a borrower must not have filed for bankruptcy, not be behind on a mortgage or been delinquent on property taxes. Beyond that, it is up to localities to determine what protections to afford consumers. Even where protections exist, they are not uniform and have no enforcement agency behind them.

FHFA and PACE

Because of the transfer of risk to the Enterprises and the FHLBanks by PACE programs through the first-lien status they obtain, FHFA has made clear that the FHLBanks should undertake such actions as they deem appropriate to protect collateral they acquire and that Fannie Mae and Freddie Mac should neither purchase nor refinance mortgages with PACE loans attached. While the Enterprises have additional authorities to protect their first-lien status, FHFA has directed only these actions to date.

The PACE lien is referred to as a "super-lien" as it moves ahead or "primes" a first mortgage lien. Further, a PACE lien often represents a retroactive creation of liability on a property ahead of the existing first-lien mortgage, which the mortgage holder neither knows about nor consents to. The creation of a super-lien thus transfers the risk of loss to the first-lien mortgage holder after the lender has already underwritten and entered into a financing arrangement that facilitates the purchase or refinancing of a home. The lender has no knowledge and no say in the subsequent additional risk and the potential decline in the value of their collateral by the layering of debt.

In a public statement dated December 22, 2014, FHFA summarized that—

> The existence of these super-priority liens increases the risk of losses to taxpayers. Fannie Mae and Freddie Mac, while operating in conservatorship, currently support the housing finance market by purchasing, guaranteeing, and securitizing single-family mortgages. One of the bedrock principles in this process is that the mortgages supported by Fannie Mae and

> Freddie Mac must remain in first-lien position, meaning that they have first priority in receiving the proceeds from selling a house in foreclosure. As a result, any lien from a loan added after origination should not be able to jump in line ahead of a Fannie Mae or Freddie Mac mortgage to collect the proceeds of the sale of a foreclosed property.

In brief, Enterprise programs support the ability of a borrower to purchase a home and the Enterprise mortgage is recorded first in time. A PACE loan is only available to someone who owns a home. In the vast majority of cases that ownership is obtained by a mortgage loan in which a lender has placed hundreds of thousands of dollars at risk. Accordingly, Fannie Mae and Freddie Mac, when they purchase loans, require at all times that they remain in a first-lien position. Also, the congressional charters for the Enterprises require that the borrower have at least 20 percent equity in a home or an approved form of credit enhancement, such as mortgage insurance, to address the risk of nonpayment. A PACE loan can erode— partially or completely— that 20 percent equity cushion.

PACE is a lending program created to attract investors to provide funds for loans for energy retrofits. Unlike normal home improvement financing, the PACE program seeks to secure a first lien on property for a loan through a governmental property tax lien. The financing concept is simple— if a residential property has to lose 90 percent of its value before a PACE lender incurs a loss, the investor has a very attractive investment opportunity. However, that opportunity comes at the expense of existing lien holders, who unexpectedly bear a new risk of loss, and, in some instances, to the disadvantage of consumers.

PACE programs transfer risk. PACE programs fundamentally do not have comprehensive regulatory supervision. PACE programs have no required uniformity. PACE programs in many, but not all, instances are administered by third parties that do not follow the same consumer protection requirements applicable to residential mortgage lenders.

FHFA Director Melvin L. Watt has been clear— super-priority liens ahead of Enterprise loans transfer undue risk and only true second-lien status avoids this problem. In other words, FHFA cannot sanction first-lien status PACE programs for Enterprise participation. Court cases across the country have upheld the Agency's directions on this point. Liens running with properties that are not extinguished through foreclosure are not true second liens, even if termed "subordinated."

Let me add that this position would be true even if the Enterprises were not in conservatorships, where taxpayers bear the risk of loss being transferred to them. But they are in conservatorships and the conservator is bound by statute to "preserve and conserve" Enterprise assets. Permitting a hidden or future lien to defeat or impair recourse to collateral— the basis for secured lending— has market implications.

Energy Efficiency Efforts

FHFA is mindful of the interest of California and other jurisdictions in promoting energy efficiency. For that reason, FHFA supports Enterprise activities that promote energy efficiency improvements and favorable consumer financing. To that end, I have provided an Attachment to highlight for the Committees information on FHFA and Enterprise activities and programs that support energy efficiency. These programs benefit from uniformity, sound underwriting and a regulatory regime that oversees and examines the loan financings.

To the Chairs, Vice Chairs and Members of the Committees, I hope that this information has been helpful to you and I am happy to answer any questions that you have.

ATTACHMENT

Energy Efficiency Efforts
FHFA, Fannie Mae and Freddie Mac

The following information summarizes efforts by FHFA and Fannie Mae and Freddie Mac to facilitate financing of energy efficient energy products:

1. *2016 Scorecard for Fannie Mae, Freddie Mac and Common Securitization Solutions*

FHFA annually provides a Scorecard of its expectations for Enterprise performance on a range of products and other priorities during the conservatorships. At the end of each year, FHFA reviews achievements in line with the Scorecard.

In its Scorecard for 2016, FHFA has called upon the Enterprises to "Evaluate options that would enable greater liquidity for Enterprise financing of energy or water efficiency investments in single-family and multifamily properties." This supports expansion of efforts for energy retrofit lending.

2. *Proposed Duty to Serve Rule*

On December 18, 2015, in the *Federal Register*, FHFA proposed a new Duty to Serve rule. The comment period closed on this proposed rule in March and FHFA is reviewing comments. Duty to serve refers to a statutory requirement that Fannie Mae and Freddie Mac provide services for moderate, low- and very low-income communities. As part of the rulemaking, FHFA proposed for public comment an approach to preserving affordable housing that would include "...(3) Energy efficiency improvements on existing single-family, first-lien properties, provided that there are verifiable, reliable projections or expectations that the improvements financed by the loan will reduce energy and water consumption by the homeowner or tenant..." *See* FHFA, Proposed Rule, *Enterprises Duty to Serve Underserved Markets*, 80 FR 79181 [based on 12 USC 4564; proposed rule at 12 CFR 1282 (energy efficiency proposal at section 12 CFR 1282.34 (d)(3); 80 FR 79200-202)].

FHFA is reviewing the comments on the proposed rule and I cannot predict a final outcome. However, I can report that we did receive a good range of input on the questions raised regarding the energy efficiency proposal.

3. *Enterprise Programs*

In addition to working on new approaches under the Scorecard and proposed Duty to Serve regulation, both Freddie Mac and Fannie Mae have active programs relating to energy efficiency and conservation improvements for single-family homes. A few of the existing and potential programs are listed below. Clear benefits of these programs include: that they are uniform in nature (including flexibility to meet certain local conditions); that they are underwritten to protect consumers and reduce risks to the Enterprises; and, that they are overseen by a federal regulator with examination and enforcement authorities.

Freddie Mac

Freddie Mac's Single-Family program supports financing to borrowers for energy efficient and renewable energy home improvements. Freddie Mac finances properties with such improvements through any mortgage product and property type eligible for lenders under its *Single-Family Seller/Servicer Guide.*

Freddie Mac's Single-Family Guide flexibilities relating to energy conservation improvements include:

(A) providing financing for energy improvements with no cap on the "as completed" value;
(B) permitting energy reports/audits or appraisals to indicate the efficiency of the property;
(C) allowing energy-related improvements on all properties including manufactured homes and new construction;
(D) for Manually Underwritten Mortgages, energy efficiency improvements can be used as a compensating factor to qualify for a higher expense-to-income ratio and debt-to-income ratio above the 36 percent cap;
(E) Home Possible and Home Possible Advantage℠, which are specialized 95 and 97 per-cent loan-to-value ratio products, may be used to finance a property with energy efficient enhancements;
(F) no objection to secondary financing, such as HELOCs, for energy efficient products;
(G) permit use of Freddie Mac's Affordable Seconds for nonprofits when financing mortgages secured by property with energy efficient improvements; and,
(H) proceeds of a cash-out refinance transaction may finance energy efficient improvements or payoff any other debt, including a PACE obligation.

Freddie Mac is committed to continuing its consideration of innovative methods of providing responsible, sustainable energy retrofit loan products.

Fannie Mae

Fannie Mae likewise has a number of single-family loan products and projects underway related to energy improvements. Among these are the following:

(A) announcement earlier this year of new HomeStyle® Energy mortgage funding up to 15 percent of the as-completed appraised value toward new energy-efficient upgrades for purchases or refinances subject to an energy use report. Expenses up to $3,500 for weatherization or water efficiency may be made without a report. Program may be used to pay off an existing PACE loan or unsecured debt related to energy-efficient upgrades;
(B) HomeStyle® Renovation mortgage for general (including energy-related) rehabilitation of existing homes in purchases or re-financings permits up to 50 percent of as-completed appraised value;
(C) flexible rules for energy efficiency enhancements which include (1) permitting non-profit funding of energy improvements under both Community Seconds mortgages and down payment assistance programs and (2) increase in the maximum debt-to-income ratio above 36 percent for manually underwritten loans for energy efficient homes; and,

(D) work with a consortium of nationally-active solar panel leasing companies to revise Fannie Mae standards to better accommodate mortgage lending to consumers who wish to lease, rather than purchase, solar power equipment for use at their home.

Fannie Mae will continue to consider additions to HomeStyle Energy® and to undertake projects with lenders to improve home energy efficiency data that may be useful to homeowners and home purchasers, mortgage lenders, real estate professionals and appraisers, and homebuyers in order to enhance underwriting and data reliability.

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IMPORTANT INFORMATION REGARDING DIRECT ASSESSMENTS FOR PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAMS

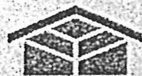
Si desea obtener información adicional sobre este aviso o si necesita la información traducida en español, por favor llame al 1(213) 974-2111.

PACE programs, under state law, allow local governments, state agencies, or inter-jurisdictional authorities to fund, through the issuance of bonds, the up-front cost of installing energy improvements on commercial and residential properties. Qualified property owners repay the bonds through direct assessments on their annual property tax bill. Some examples of qualifying projects include high efficiency air conditioners and heating systems, windows, cool roofs, insulation, rooftop solar panels, and smart irrigation systems.

The PACE direct assessments are different from the majority of assessments (e.g., library, flood control or solid waste) in the following ways:

- Participation in a PACE program is voluntary and is not required pursuant to any government program or initiative.
- The Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) are the owners of a majority of all home mortgages. Fannie Mae and Freddie Mac are government-sponsored enterprises established to facilitate a more efficient national mortgage market for home mortgages. These agencies have previously stated that they would not purchase home mortgages with PACE assessments. If a property owner with a PACE assessment refinances his or her mortgage or sells the property, lenders or prospective buyers may require that the assessment be paid in full as part of the refinancing or sale transaction.
- Property owners should consult with their lender(s) or mortgage servicer(s) prior to entering into an assessment contract. Entering into an assessment contract without the consent of an existing lender(s) or mortgage servicer(s) may constitute an event of default under such agreements or security instruments. Defaulting under an existing mortgage agreement or security instrument could have serious consequences to property owners, which could include demand for payment in full or foreclosure.
- Property owners must keep property taxes current. If you have a PACE assessment and you become delinquent on your property taxes, your PACE assessment is also delinquent. Under the terms and conditions of a PACE financing, the holders of the PACE bonds have the right to initiate a judicial foreclosure process against the property to recover ANY delinquent PACE assessment, which could result in the loss of your property.
- The PACE bond investors DO NOT have to honor an Installment Plan of Redemption, as allowed under the California Revenue and Taxation Code, to repay defaulted taxes over a five-year period.
- If you pay your property taxes through your lender or mortgage servicer, you may need to contact your lender or mortgage servicer to adjust your impound amount and ensure that sufficient funds are available to cover the annual PACE assessment.
- If you have been approved for PACE financing and execute an assessment contract, the annual assessment payments will appear under the Direct Assessment Section of your property tax bill. Some examples of how the assessment will appear are WRCOG Hero, LACEP RES PACE, LACEP RES 2016, LACEP COMM or California Hero to name a few. If you have a specific question in regards to your direct assessment, please refer to the telephone number found on your Annual Property Tax Bill.

For more information about the Los Angeles County PACE program, please visit www.lapace.org.



CaliforniaFIRST
EFFICIENCY FINANCING

Do PACE loans pose risks to lenders?

By Jerry Budrick

Local real estate agent Sarah Zulim, of Sierra Gold Real Estate, in Plymouth, has unearthed some hidden dangers to homeowners interested in participating in the federally managed Property Assessed Clean Energy loan program.

Zulim, who recently finished her third term as president of the Amador County Association of Realtors, warns loan-seekers of the little-noted fact that PACE loans assume first position, which means the loan amounts must be paid back before lending institutions that hold what they believed to be "first mortgages" on financed properties are paid.

According to its supporters at pacenation.us, "PACE is a simple and effective way to finance energy efficiency, renewable energy, and water conservation upgrades to buildings. PACE can pay for new heating and cooling systems, lighting improvements, solar panels, water pumps, insulation, and more for almost any property – homes, commercial, industrial, non-profit, and agricultural.

"Property owners across the US are using PACE because it saves them money and makes their buildings more valuable. PACE pays for 100% of a project's costs and is repaid for up to 20 years with an assessment added to the property's tax bill. PACE financing stays with the building upon sale and is easy to share with tenants. State and local governments sponsor PACE financing to create jobs, promote economic development, and protect the environment."

However, in recent testimony before the California legislature, the Federal Housing Finance Agency stated that it cannot support first-lien property-assessed clean energy programs for participation by Government-Sponsored Enterprises Fannie Mae and Freddie Mac. PACE programs — which currently operate in 30 states – allow municipalities to provide financing for energy-efficient retrofitting through property tax assessment, which gives the liens so-called super-priority over the first-lien mortgage holder.

FHFA pointed out that the PACE programs principally take property value into consideration to support a loan, rather than the homeowner's ability to repay, and that the loans have no enforcement agency behind them to ensure consumer protection standards. Given that, and the excessive risk posed by the "super-lien" status of PACE liens, FHFA has previously warned that the GSEs cannot buy mortgages on homes with first-lien PACE loans attached to them.

"Super-priority liens ahead of GSE loans transfer undue risk and only true second-lien status avoids this problem," FHFA said. "Permitting a hidden or future lien to defeat or impair recourse to collateral — the basis for secured lending — has market implications."

ABA and other housing groups have previously expressed similar concerns about the risks that the PACE program and other attempts to place super-priority liens could have on consumers and the housing market overall.

To read FHFA's testimony in its entirety, visit fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/PACEStatementCalifAssembly_testimony_FINAL692016.pdf.

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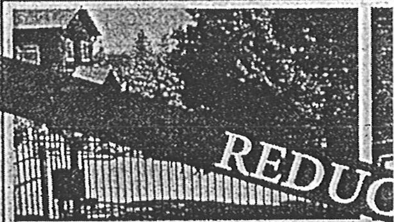

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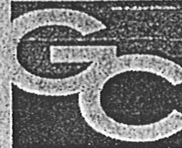

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