Memorandum
Office of Jenine Windeshausen
Treasurer-Tax Collector

To: The Board of Supervisors

From: Jenine Windeshausen, Treasurer-Tax Collector

Date: June 18, 2013

Subject: mPOWER Placer Program Update and Residential Direction to Proceed

Action Requested

1) Receive a report on the mPOWER Placer Program and the status of PACE nationally.
2) Consider a resolution to authorize resuming the Residential Program
3) Set a public hearing for July 9, 2013, for consideration of a resolution authorizing processing fees for mPOWER applications.

Background – Program Update

History: On December 8, 2009 your Board took the first official action to establish a PACE (Property Assessed Clean Energy) program in Placer County by adopting a resolution of intention to provide financing for energy related improvements on private property through the use of voluntary contractual assessments and by authorizing various actions related to the establishment of the mPOWER Placer Program (the "Program").

On January 26, 2010, your Board approved the Program documents and on February 9, 2010, your Board authorized the financing arrangements for Program administrative costs through the issuance of a TRAN (Tax and Revenue Anticipation Note) in an amount not to exceed $5 million and for a bond and a loan agreement to finance contractual assessments in an amount not to exceed $33 million.

On March 22, 2010, the Program launched and began accepting applications from property owners in the County and in the cities.

In May of 2010 issues with the FHFA (Federal Housing Finance Authority) became apparent and on July 6, 2010, the FHFA issued a statement (the "Statement") which seemed to indicate at the time that FHFA would red-line all borrowers in jurisdictions with active PACE programs. The FHFA statement is attached. The FHFA directed lenders to assume the maximum allowable PACE lien on all properties in an active PACE jurisdiction and therefore to increase loan-to-value ratios and debt-to-income ratios, based on the maximum PACE lien amount, for all borrowers within the PACE jurisdiction without regard to actual Program participation. On July 1, 2010, the Program administratively stopped accepting applications. Due to the FHFA statement, on July 27, 2010, at the recommendation of the Treasurer-Tax Collector, your Board adopted a resolution suspending the residential portion of the Program after only 18 weeks of operation. On July 6, 2010, the Office of the Comptroller of the Currency (OCC) also issued a statement related to non-residential properties. The OCC statement is attached. This statement did not contain the apparent threat of red-lining that the FHFA statement seemed to infer. After consideration of the OCC statement your Board determined to continue the commercial program.

Legal Action: In August of 2010, at the direction of your Board, Placer County intervened in an action filed against the FHFA and Placer County became a co-plaintiff with Sonoma County, the City of Palm Desert, the California Attorney General, the Sierra Club and the National Resources Defense Council in an attempt to reverse FHFA's July 6th statement related to residential assessments. The lower court dismissed all substantive objections to the FHFA statement except, whether the FHFA was required to follow the rule-making process of the federal Administrative Procedures Act (APA) prior to issuing the PACE statement. The lower court required the FHFA to commence the APA rule-making process. The FHFA then appealed. The FHFA completed two comment periods required by the APA prior to the Appellate Court ruling. On March 20, 2013 a final ruling from the Ninth Circuit Appellate Court was issued in favor of the FHFA on the only issue not dismissed by the lower court; those rulings were not addressed in the appeal. At this point, the FHFA had not taken the final rule-making step of issuing a rule. The Ninth Circuit ruling merely held that FHFA was not subject to the regulatory rule making process under the federal APA. Therefore the FHFA statement remains in effect. The FHFA has not yet and may not issue a rule to complete the rulemaking process. As a plaintiff in the FHFA lawsuit, the County's ability to change its course regarding the suspension of the residential program until now was constrained.

Federal Legislation: The Board's legislative priorities include support of a federal legislative PACE fix. Placer County has had an active role in supporting a federal legislative solution to the FHFA issue. The Sacramento Metropolitan Chamber of Commerce has identified a PACE fix as a top legislative priority and has sought out representatives from mPOWER to provide leadership on federal advocacy. On March 12, 2013, your Board approved the Treasurer's participation in the Sacramento Metro Chamber's annual Cap-to-Cap Program as a co-chair of the Clean and Green Team with the priority of seeking a federal legislative PACE fix. The Treasurer has worked with County Counsel and outside bond counsel who assisted in drafting a House bill that provides a safe harbor for residential and commercial PACE programs that include certain protections for consumers and mortgage holders. Sonoma County and Western Riverside Council of Governments (Western Riverside COG) support the legislation and are working with Placer County to identify a bi-partisan contingent of House members to introduce the legislation. This legislation is supported by numerous stakeholders throughout Placer County and the Sacramento region. PACE is also supported by financial institutions, contractors and other business interests.

State Funding: In furthering the State's commitment to PACE, the Governor's May Revise included an allocation of $10.8 million to establish an Insurance Loan Loss Reserve Fund for residential PACE programs in California. Legislative approval of this allocation is expected before the end of June. The purpose of this Fund is to provide risk mitigation for PACE programs to increase PACE bond acceptance in the marketplace, and to protect against the risk of assessment default and foreclosure. The Fund will be administered by the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) under the State Treasurer's Office. In conjunction with Western Riverside COG and Sonoma County, mPOWER has already been in contact with the Executive Director of CAEATFA to discuss program requirements and implementation.

National Status of PACE Programs: The legislatures of 32 states and the District of Columbia have authorized PACE legislation. Placer County was among a handful of jurisdictions in the state and the nation with a PACE program when it launched mPOWER Placer in March of 2010.

Sonoma County and Palm Desert were co-plaintiffs in the FHFA lawsuit; however they continued their residential programs throughout the lawsuit and continue to offer residential programs. The Western Riverside COG and the City of Sacramento have launched both residential and commercial programs while the FHFA lawsuit was pending. All of these residential programs have operated without adverse action by housing regulators or lending institutions.

Commercial programs are currently in operation in Los Angeles, San Francisco and Sacramento City, and Sacramento County. There are many other commercial and residential programs operating or launching in other parts of the Country including Miami-Dade in Florida, Atlanta, Georgia, and the Connecticut state program and many more are under development.

Sonoma County has provided over $51 million in financing on 1,805 residential projects and over $10 million on 58 commercial projects secured by PACE assessments since the program started in March of 2009.

Western Riverside COG has provided over $30 million in financing on 1,729 residential projects secured by PACE assessments since their residential program started in December of 2011. Additionally the Western Riverside COG program has over 2,700 approved residential applications and is approaching assessments over $185 million in total funding pending project completion. Western Riverside COG's commercial program was launched in December of 2012 and has 5 approved applications totaling $600,000 to be funded at project completion. Due to the success of their program, Western Riverside COG is now offering program administration and financing to other local governments throughout the state.

The FHFA letter indicated specific adverse consequences to all property owners within a jurisdiction offering a residential PACE program. However, there has not been any such adverse action by housing regulators or lending institutions. There has been no action taken against Sonoma County or the City of Palm Desert, which were operating residential PACE programs throughout the litigation and have continued to do so after the litigation concluded. The Western Riverside COG was not a party to the FHFA litigation. Their residential program has not had any adverse action taken or threatened since its program start-up a year and a half ago. Other residential programs within the state also continue to operate without consequence. Based on FHFA's lack of enforcement action and other recent information, it is believed that FHFA will not pursue or enforce the Statement as to the red-lining of properties located in jurisdictions with active PACE programs. It was the FHFA statement reference to red-lining and the potential result of adverse consequences to all property owners in Placer County that the Board took action to suspend the residential program.

It is now believed that the only potential risk related to actions by federal agencies is that FHLMC and FNMA may refuse to purchase mortgages that have PACE liens, and could therefore require in any transaction for new financing on property with a PACE lien, that the lien be paid off. Recent information from other programs indicates that the majority of the time lenders do not require the PACE lien to be paid-off. In Sonoma County the PACE lien was carried forward with the new financing in 15 out of 72, or 21% of properties sold, and 247 of 414, or 60% of properties refinanced. Sonoma's records also reflect that 98 different lending institutions did not make new financing subject to the PACE lien being paid-off. This indicates that pay-off of the PACE lien is more likely due to by buyer preference than due to lender requirement. In Western Riverside County of 134 properties subject to new financing only 4, or 3% resulted in the pay-off of the PACE lien. It is unknown if these pay-offs were due to buyer preference or lender requirement.

Prior to the suspension, the mPOWER application process included a written disclosure regarding the possibility of the requirement to pay-off the PACE lien which was acknowledged by the property owner in writing. If the residential program were to be resumed this disclosure would be again required of all applications.

Staff will continue to monitor FHFA and will report to the Board any material modifications in FHFA policies or actions.

Status of mPOWER Placer: When the residential program was suspended, mPOWER Placer was staffed with a Program Manager, one clerical position and four Program Specialists. When the residential suspension was put into effect, all but two Program Specialists were eliminated. Other cost reductions were made and remain in effect pending efforts toward a PACE solution. Total program expenditures to date including all start up expenditures are approximately $1,836,833, (including estimated expenditures for the remainder of the current fiscal year). The proposed budget for mPOWER for 2013/14 is $418,261. Total revenues received to date are $586,372 and future revenues from current assessments are estimated to be $472,777, for a total estimated cost recovery of $1,059,149. The current total for unrecovered costs is estimated at $777,684. An outline of revenues and expenditures from program inception to date is attached.

To cover the 2013-14 budget of $418,261, approximately $1.5 million in new assessments are needed. Additionally, to realize the unrecovered start-up and administrative expenditures of $777,684, new assessments of approximately $3 million are needed. To achieve cost recovery for program expenditures through the 2013/14 year, a total of approximately $4.5 million new assessments would be needed.

mPOWER was designed to be self-sustaining and to achieve cost recovery over time based on the volume of assessments financed by utilizing a portion of the interest paid on the assessment as revenues to offset program expenditures. The suspension of the residential program has significantly diminished the ability to recover costs more timely than originally anticipated. It is estimated that approximately $1.5 million in new assessments are needed to offset the 2013/14 budget amount of $418,261. It should be noted that 156 applications totaling $5.8 million were received during the 14 weeks that the program was accepting applications in the spring of 2010. Some of the property owners whose applications were suspended in July of 2010 have been contacted; 73 have expressed interest in resuming their applications. It is estimated that these applications will result in over $1.5 million in assessments. Staff has yet to contact at least 34 more property owners whose applications were also suspended in July 2010.

Interest charges continue over the life of the assessment; related to the term of the assessment (5, 10, 15 or 20 years). The portions of the interest charges taken to cover program costs are higher in the early years of the assessment to cover application processing costs. The interest charges continue for the life of the assessment at a lower rate in the out years to recover ongoing administrative costs. Each year additional assessments are added; increasing the programs total revenues. The program is expected to achieve full cost recovery for all prior unrecovered expenditures early in the 2016/17 fiscal year, and to cover all annual on-going expenditures from that point forward. Thereafter it is expected to realize annual revenues in excess of the program's annual expenditures.

The most recent TRAN was in the amount of $1.3 million and it matured on November 1, 2012 leaving the program fund with a current negative balance of approximately $1.5 million. To continue the program, the Board will need to approve the issuance of a new TRAN in the amount of $2,100,000 or provide funding from another source. Should the program cease (including both the residential and commercial programs), the County will need to appropriate approximately $777,684 to fund unrecoverable costs.

Commercial Program: The commercial program has financed five projects totaling $713,658. A sixth application has been fully approved for $100,000 in financing and will be funded as soon as the project is completed in mid-July. Two more projects are currently being reviewed for financing totaling $622,000. Participation in the commercial program is light but steady and mPOWER continues to be recognized as a successful program and a leader in commercial PACE in California.

As a part of the commercial program, the County has participated in the US Department of Energy's Better Buildings Challenge which is a promotional program with the goal of increasing energy efficiency of the county's non-residential building stock. The program includes a showcase retrofit project which will be nationally recognized. Granlibakken Conference Center and Lodge has been selected for Placer County's showcase project. Sierra Business Council has assisted with the process of supporting Granlibakken's project. Currently, Sierra Business Council is working with Granlibakken to select a contractor who will develop a master plan for a phased energy improvement project. Built in stages over the past 45 years, the project will be a comprehensive energy retrofit of this mixed-use authentic Tahoe facility. Granlibakken has already received a preliminary approval for mPOWER financing. Final approval will be based on the amount of financing necessary. The total project cost, while unknown at this time, will be the largest mPOWER financing to-date.

Residential Program: The mPOWER Placer program completed financing on eleven residential projects totaling $427,751 before being suspended after 14 weeks of operation. During the 14 weeks that the mPOWER Placer residential program was operational, 156 applications totaling $5.8 million were received. Almost all of these applications were from residential property owners. Thousands of inquiries were fielded as well, and over 700 property owners attended mPOWER Placer information and consumer seminars.

Recently staff conducted a survey of 73 of the 124 applicants that were not able to complete the financing process due to the suspension of the residential program. Of these 73 applicants, 46 indicated that if the residential program were to re-open, they would be interested in activating their suspended application to proceed with mPOWER Placer financing and to move forward with the installation of solar or energy efficiency improvements. The estimated total for these applications is $1.64 million. There are other applicants from 2010 that have not yet been contacted regarding their interest in re-activating their application which could result in additional cost recovery.

The residential program drives program feasibility. High residential demand and relatively short application processing and project installation timeframes result in the volume of assessments needed to recover costs. Commercial projects can take six months or more to process and there are various challenges that inhibit the ability of commercial programs to scale. Each commercial project takes a significant amount of staff time to process. A stand alone commercial program has limited potential for cost recovery given a long and complex application process and other challenges and costs related to targeting the market of commercial property owners.

The costs, risks and benefits of resuming the residential program are outlined here.

Costs:

1. Annual Budget: $500,000
   Estimated amount of assessments needed to cover annual budget: $1.5 million
2. Unrecovered cost-to-date: $777,684
   Estimated amount of additional assessments needed to offset unrecovered costs to date: $3 million.

Risks:

1. Property owners could be required to pay-off assessments at the time of new financing (refinance or sale). Appropriate disclosures would be provided to all property owners.

2. Although not likely, FHFA could change course and begin taking action to impose the red-lining of non-participating properties in Placer County. Additionally, future federal legislation may provide protection against such actions by FHFA.
3. Assessments could still be insufficient to cover annual costs and unrecovered costs to date due to unknown factors in the future.

Benefits:

1. A residential program provides greater progress toward original program objectives related to job creation and economic resurgence.
2. Program infrastructure and staffing is in place and ready to go.
3. There would be minimal cost increase to restart the residential and future cost increases could be deferred until there are assessments in an amount sufficient to offset the cost increases by shifting and flexing resources from the commercial program.
4. There is a ready pipeline of at least 46 applications totaling $1.64 million from 2010 that can be restarted. There are more applicants from 2010 that may be interested in re-activating their applications who have not yet been contacted.
5. Residential assessment volume will help offset fixed program costs, making the commercial program more viable.
6. Maintaining a commercial program can be helpful to property owners who are required to comply with AB1103 benchmarking and real estate disclosure requirements.
7. State funding included in the 2013/14 state budget of a loan loss reserve fund could mitigate regulator concerns related to assessment foreclosure and market concerns related to PACE bond defaults which would help to open the municipal market for PACE bonds.
8. Carbon-credits or other environmental benefits derived from reduced energy consumption as a result of mPOWER Placer assessments could be used to offset AB32 requirements.
9. There is potential for new revenue through providing mPOWER Placer program services to other jurisdictions.

Your Board is being asked to consider resuming the mPOWER residential program, given the continued demand and the fact that the two largest programs in the state, Sonoma County and West Riverside COG have operated residential programs continuously over the past three years resulting in over 3,500 assessment liens without federal interference or consequence. A resolution to lift the suspension on the residential program is attached for your consideration.

Processing Fee: Staff has also conducted a fee study for processing residential applications. The study indicated that a fee on each approved residential application would help accelerate cost recovery. A conservative estimate of 260 residential applications per year would result in $130,000 annually in additional cost recovery. We plan to address the potential of implementing a processing fee for applications at a future Board meeting.

Should your Board decide to lift the suspension on the residential program, you are asked to consider scheduling a public hearing to consider authorizing the collection of application fees to enhance program cost recovery.

Fiscal Impact:

Program costs will continue to need to be financed through a TRAN until cost recovery is achieved through the collection of assessments and fees. There will be nominal promotional costs related to resuming the residential program. It is anticipated that resuming the Residential Program will not result in a measurable cost increase costs. The current mPOWER budget is sufficient to cover any increase in costs at this time. Any material increase in program costs would be related to substantial increases in applications which should provide sufficient revenues to cover any cost increase related to increased demand. A total of $4.5 million will be needed to offset unrecovered costs to date. It is anticipated that at least 46 applications totaling approximately $1.64 million from 2010 will be re-activated which would help to offsets the unrecovered costs to date.

If a processing fee for residential applications is authorized by your Board at a future date, it is estimated that revenue recovery would increase by approximately $130,000 annually. Increased volume of financing related to increased residential assessments will help to accelerate cost recovery from the interest rate charged on assessments.

If the program is terminated, there will be limited ability to recover costs beyond the assessments currently in place. The General Fund or other funding sources would be needed to cover costs to date which are estimated to be $777,684.

Attached:

1. Resolution Authorizing Resumption of Residential Program
2. Federal Housing Finance Authority Statement
3. Office of the Comptroller of the Currency Statement
4. Summary of Program Revenues and Expenses

Before the Board of Supervisors
County of Placer, State of California

In the matter of:
Declaring Certain Actions Related to mPOWER Placer

Resol. No: ______________

Related to Ord. No: __________

The following Resolution was duly passed by the Board of Supervisors of the County of Placer at a regular meeting held on June 18, 2013,

by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

____
Chairman, Board of Supervisors

Attest:
Clerk of the Board

WHEREAS, the County of Placer (the "County") is authorized under Chapter 29 of Part 3 of Division 7 of the Streets & Highways Code of the State of California ("Chapter 29") to authorize assessments to finance the installation of distributed generation renewable energy sources and energy efficiency and water efficiency improvements that are permanently fixed to real property ("Authorized Improvements"); and

WHEREAS, Chapter 29 authorizes the County to enter into contractual assessments to finance the installation of Authorized Improvements in the County; and

WHEREAS, on January 26, 2010, pursuant to Resolution No. 2010-22, the Board of Supervisors established the "money for Property Owner Water & Energy Efficiency Retrofitting" program (the "mPOWER Placer Program") within the boundaries of the County and ordered its implementation; and

WHEREAS, on July 6, 2010, the Federal Housing Finance Agency issued the Statement attached hereto as Exhibit A (the "Statement"); and

WHEREAS, as a result of the Statement and in order to avoid any potential for adverse impact of the type described in the Statement on property owners in the County as a result of the mPOWER Placer Program, the Board of Supervisors declared that, as long as the Statement remained in effect, it would no longer accept applications for the mPOWER Placer Program from residential properties or provide financing through the mPOWER Placer Program to residential property owners in the County who executed a contractual assessment with the County on or after July 6, 2010 by adopting Resolution 2010-201; and

WHEREAS, the experience of other governmental agencies in California that operate programs similar to the mPOWER Placer Program and provide financing to residential properties suggests that it is possible at this time to provide financing through the mPOWER Placer Program to residential property owners in the County without subjecting property owners in the County to adverse impacts; and

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of the County of Placer takes the following actions:

Section 1. Recitals. The above recitals are true and correct.

Section 2. Acceptance of Applications and Authorization of Certain Program-Related Activities. The Board of Supervisors hereby orders that, the County shall begin to accept applications for the mPOWER Placer Program from residential properties and provide financing, subject to eligibility and approval, through the mPOWER Placer Program to residential property owners in the County who apply with the County on or after June 18, 2013.

Section 3. Reports Regarding Federal Housing Finance Agency Actions. The Board of Supervisors hereby orders the Treasurer-Tax Collector to report to the Board of Supervisors periodically about any actions taken by the Federal Housing Finance Agency or any other federal regulatory agency that could materially impact the operation of the mPOWER Placer Program.

Section 4. Disclosures to Property Owners. The Board of Supervisors hereby orders the Treasurer-Tax Collector to work with the County Counsel to provide residential property owners who express an interest in participating in the mPOWER Placer Program with complete disclosure about the Statement and its impact on properties that participate in the mPOWER Placer Program.

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.

FEDERAL HOUSING FINANCE AGENCY
STATEMENT

OCC 2010-25

OCC BULLETIN

Comptroller of the Currency
Administrator of National Banks

Subject: **Property Assessed Clean Energy (PACE) Programs** Description: **Supervisory Guidance**

Date: July 6, 2010

TO: Chief Executive Officers of All National Banks, Department and Division Heads, and All Examining Personnel

The Office of the Comptroller of the Currency (OCC) is issuing this guidance to alert national banks to concerns and regulatory expectations regarding certain state and local lending programs for energy retrofitting of residential and commercial properties, frequently termed a Property Assessed Clean Energy (PACE) program. PACE or PACE-like (PACE) programs use the municipal tax assessment process to ensure repayment. Under most of these programs, such loans acquire priority lien, thereby moving the funds advanced for energy improvements ahead of existing first and subordinate mortgage liens.[1] This lien infringement raises significant safety and soundness concerns that mortgage lenders and investors must consider. Reflecting these concerns, the Federal Housing Finance Agency (FHFA) today issued the attached statement directing actions that Fannie Mae, Freddie Mac, and the Federal Home Loan Banks should undertake to protect their operations with regards to such programs.

National banks need to be aware of the FHFA's directives for loans that they may originate with the intent to sell to the government sponsored entities. More generally, national banks should ascertain if such programs exist in jurisdictions where they do business, determine whether those programs alter banks' lien positions, and carefully consider the programs' impact on both banks' current mortgage portfolios and ongoing mortgage lending activities.

National bank lenders should take steps to mitigate exposures and protect collateral positions. For existing mortgage and home equity loans, actions may include the following in accordance with applicable law:

- Procuring loss guarantees from the respective states or municipalities;
- Escrowing tax assessment-related debt service payments;
- Re-evaluating and adjusting home equity line of credit (HELOC) line amounts; and
- In the case of commercial properties, securing additional collateral.

For new mortgage and home equity loans, mitigating steps may include:

- Reducing real estate loan-to-value limits to reflect maximum advance rates of PACE programs to the extent they create super-senior lien priorities; and
- Considering the maximum amount of the PACE payment portion of the annual tax assessment in the institution's analysis of the borrower's financial capacity.

In addition, banks that invest in mortgage backed securities or that are considering the purchase of pools of mortgage loans should consider the impact of tax-assessed energy advances on their asset valuations. Finally, the OCC expects investment banking units to be cognizant of the impact of this type of funding vehicle on their respective institutions and on the mortgage market overall when making any decisions regarding associated bond underwriting.

The OCC supports commercial and residential energy lending when such lending programs observe existing lien preference, ensure prudent underwriting, and comply with appropriate consumer protections. Programs that fail to comply with these expectations pose significant regulatory and safety and soundness concerns.

For questions or further information, please contact Joseph A.Smith, Group Leader, Retail Credit Division at (202) 874-5170.

/signed/
Timothy W. Long
Senior Deputy Comptroller for Bank Supervision Policy
and Chief National Bank Examiner

[1] Some states have chosen not to adopt such priority positions for their loans.

For instructions on how to view attachments, visit the Accessibility page.

Summary of Revenues and Expenses

Expenditure:			
09/10	Start-up	$ 128,155	
09/10	Administrative	303,539	
10/11	Start-up	67,425	
10/11	Administrative	355,930	
11/12	Administrative	499,393	
12/13	YTD	326,837	
12/13	Estimated 4th Quarter	$ 155,554	
Total Expenditures to Date:			$ 1,836,833
Revenues:			
Cost recovery from assessments		$ 194,641	
Cost recovery from pre-payment		3,501	
Grant received		372,600	
Fee recovery		4,469	
Investment income		$ 11,161	
Total Revenues to Date:			$ 586,372
Future Cost Recovery from Current Assessments at year ____:			$ 472,777
Unrecovered Expenditures to Date:			$ 777,684