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State of California
DEPARTMENT OF JUSTICE



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May 17, 2010

Via Facsimile and U.S. Mail

Edward DeMarco
Acting Director
Federal Housing Finance Agency
1700 G Street, N.W.
Washington, DC 20552-0003
FAX: (202) 414-3823

RE: Fannie Mae Lender Letter LL-2010-06 (May.5, 2010) and
Freddie Mac Industry Letter (May 5, 2010) re Property Assessed Clean Energy
(PACE) Programs

Dear Acting Director DeMarco:

Property Assessed Clean Energy (PACE) programs authorize local governments to finance energy efficiency and renewable energy improvements to the benefit of homeowners and small businesses. In California, PACE financing is not accomplished through loans in the traditional sense, but rather through local governments' long-standing and well-recognized powers to assess and tax. PACE programs in California can assist thousands of individual participants statewide, help to drive the State's green economy, and create thousands of jobs.

On May 5, 2010, Fannie Mae and Freddie Mac issued short, somewhat cryptic lender and industry advice letters concerning PACE programs. While the advice letters do not expressly mention California PACE programs, they have nonetheless caused confusion and concern among California PACE stakeholders. By this letter, we request that the Federal Housing Finance Authority (FHFA) immediately confirm in writing that the advice letters do not affect PACE in California.

As you are likely aware, the California Attorney General's Office at the end of last year began a discussion with FHFA staff about PACE in California. During these discussions, your staff assured this Office that we would continue to work together on issues related to PACE. Relying in part on this assurance, California has invested substantial resources in PACE programs, consistent with the White House's "Recovery Through Retrofit" policy document and with the express support of the Department of Energy. A substantial portion of the approximately \$300 million in Energy Efficiency and Block Grant funding, and a substantial portion of the over \$220 million in additional American Recovery and Reinvestment Act funds administered by the California Energy Commission through its State Energy Program, have been dedicated to PACE programs. Moreover, California recently passed legislation creating a \$50 million state reserve fund that will allow participating local governments to obtain financing for PACE on more favorable terms.

The disruption caused by Fannie Mae's and Freddie Mac's recent actions may have serious financial implications for participating local governments and the homeowners and small businesses participating in these programs in California. To take just one example, Sonoma County, through its PACE program, already has financed over 800 energy improvement projects. But the repercussions will be wider still. PACE programs in California create reliable markets for new technologies in energy efficiency, renewable energy, and water efficiency. They thus support green manufacturing jobs and thousands of additional jobs associated with installation and maintenance of energy efficiency and renewable energy projects. Now is not the time to create unnecessary uncertainty in these important emerging businesses and industries.

Based on our recent conversation with your General Counsel, Alfred Pollard, we understand that the May 5, 2010, letters were not intended in any way to signal a change in the position of FHFA, Fannie Mae or Freddie Mac regarding PACE in California. Accordingly, we request that FHFA immediately confirm in writing that participants in California PACE programs are not in violation of Fannie Mae/Freddie Mac Uniform Security Instruments prohibiting loans that have a senior lien status to a mortgage. We are open to discussing with you what form that confirmation should take, including, but not limited to, withdrawal of the May 5, 2010, letters.

We would prefer not to have to pursue some form of declaratory relief to resolve the confusion, but, because of the importance of the issue to California, we certainly reserve that as an option if a clear and unequivocal response is not forthcoming.

Edward DeMarco, Acting Director

May 17, 2010

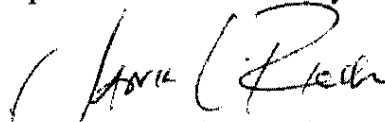
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Once this immediately pressing matter is resolved, we look forward to discussing with you what longer-term solutions may be warranted to foster the continued responsible development of PACE programs in California.

Sincerely,



CLIFFORD RECHTSCHAFFEN
Special Assistant Attorney General



JANILL L. RICHARDS
Supervising Attorney General

For EDMUND G. BROWN JR.
Attorney General

cc: Joseph R. Biden Jr., Vice President
Dianne Feinstein, U.S. Senator
Barbara Boxer, U.S. Senator
Steven Chu, Secretary, U.S. Department of Energy
Shaun Donovan, Secretary, U.S. Department of Housing and Urban Development
Timothy Geithner, Secretary, U.S. Department of the Treasury
Carol Browner, Director, White House Office of Energy and Climate Change
Nancy Sutley, Chair, Council on Environmental Quality
Michael J. Williams, President and Chief Executive Officer, Fannie Mae
Charles E. Haldeman, Jr., Chief Executive Officer, Freddie Mac
Arnold Schwarzenegger, Governor, State of California
Bill Lockyer, State Treasurer and Chair, CAEATFA
Karen Douglas, Chair, California Energy Commission