

# PACE

## PROPERTY ASSESSED CLEAN ENERGY

FHFA Rulemaking Webinar

15 February 2012

**PACE***Now*

## TOPICS FOR THE WEBINAR

Introduction..... Adam Browning, Vote Solar

Process..... Kit Kennedy, NRDC

The Opportunity..... David Gabrielson, PACENow

Talking Points

Rule Recommendation.....Cliff Staton

## BACKGROUND

1. FHFA issues July 6, 2010 statement – residential PACE stalls
2. Lawsuits filed in US District Courts in NY, FL, and CA
3. District Court for Northern District of CA denied FHFA’s motion to dismiss – issued a preliminary order requiring FHFA to provide for public notice and comment on PACE
  - ✓ Court finds likelihood of success on the CA plaintiff’s legal claims that FHFA violated the federal Administrative Procedures Act
4. Court enters preliminary injunction ordering FHFA to issue **Advance Notice of Proposed Rule** on PACE, followed by a **Proposed Rule** and a **Final Rule**, with public comment required on the ANPR and Proposed Rule
5. FHFA has appealed the ruling to the US Court of Appeals for the 9<sup>th</sup> Circuit
  - ✓ 9<sup>th</sup> Circuit has denied FHFA’s motion for a stay, requiring FHFA to proceed with the ANPR and Proposed Rule steps of the rulemaking process
  - ✓ FHFA’s appeal is still pending

# THE PROCESS

## 1. Advance Notice of Proposed Rulemaking

- ✓ Issued January 26<sup>th</sup>, FR Vol. 77, No. 17, Pg. 3958
- ✓ Comment period runs until March 26<sup>th</sup>
- ✓ ANPR reiterates at length, FHFA concerns:
  - PACE Assessments are invalid (unlike other assessments)
  - “ Significant safety and soundness concerns” for GSEs
  - Lack of standards – risk to consumer
- ✓ ANPR poses 16 questions regarding risks to lenders, underwriting standards, and consumer protections
- ✓ FHFA “Proposed Action”
  - GSEs will not buy mortgage that has **or could become** subject to a PACE assessment

# THE PROCESS

- ✓ Public comment can address any or all of FHFA's concerns or provide any other information about PACE in response to the ANPR
- ✓ Public can propose PACE guidance or a course of action to FHFA

## **2. Proposed Rule on April 26<sup>th</sup>**

- ✓ Public will have a period of time to comment on the Proposed Rule  
“of no less than 30 days”

## **3. FHFA issues Final Rule (Date to be Determined)**

# THE OPPORTUNITY

## **ANPR is the Opportunity to:**

- ✓ Explain the Extensive Public Benefits of PACE Programs
- ✓ Provide your own unique perspectives on the benefits of PACE programs
- ✓ Submit evidence and data about the benefits of PACE programs
- ✓ Defend State and Local Government Rights
- ✓ Address FHFA's Objections to PACE
- ✓ Provide recommendations for the Proposed Rule and Final Rule

# TALKING POINTS

## **Rationale for PACE**

- ✓ Solves key barriers
- ✓ Job creation & economic development
- ✓ Energy independence & energy security
- ✓ Avoided costs – plants & grid
- ✓ Environmental protection

## **PACE Assessments are Valid**

- ✓ Centuries of precedent
- ✓ Valid laws in 28 states (already validated in FL and CA)
- ✓ FHFA has no authority to choose which assessments are valid
- ✓ PACE assessment not unlike other assessments – voluntary, duration

# TALKING POINTS

## **PACE has Minimal Risks for all Stakeholders**

- ✓ Reduces energy costs – homeowner savings
- ✓ Hedge against energy spikes and increases over time
- ✓ Improves home value
- ✓ Non-acceleration
- ✓ Positive equity test
- ✓ Limits on project size
- ✓ Cost effective – positive SIR
- ✓ Quality work
- ✓ Homeowner soundness

## RECOMMENDED RULE

Residential PACE programs should be allowed to proceed. Fannie Mae and Freddie Mac must establish fair underwriting standards for programs that conform with DOE standards and guidelines, or those found in HR 2599.

## Resources

# TAKING ACTION - RESOURCES

## Help Frame Your Comments

PACENow Talking Points: [download](#) a pdf file

View them [online](#)

## No Time to Write Comments?

Use a Template Letter: [download](#) a pdf file

## Additional Information

[www.PACENow.org](http://www.PACENow.org)

# TAKING ACTION - RESOURCES

## Advance Notice of Proposed Rulemaking

Download: [Federal Register](#) in pdf form

Online: [Federal Register](#) website

## How to Submit Comments

By e-mail: to General Counsel Alfred Pollard at [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov) with subject line “RIN2590-AA53”

Online: Comment directly or upload a file at the [Federal eRulemaking Portal](#) but it is advised to also e-mail to Alfred Pollard using the address and subject above

US Mail: Alfred Pollard, General Counsel  
Attention: Comments/RIN2590-AA53  
Federal Housing Finance Agency, 8<sup>th</sup> Floor  
400 Seventh Street, SW  
Washington, D.C. 20024

## View Other Comments

Online: All comments are posted as submitted on the [FHFA website](#)

# LINK ADDRESSES

PACENow Website

[www.pacenow.org](http://www.pacenow.org)

FHFA Advance Notice of Proposed Rulemaking

<http://www.gpo.gov/fdsys/pkg/FR-2012-01-26/pdf/2012-1345.pdf>

eRulemaking Portal

<http://www.regulations.gov/#!documentDetail;D=FHFA-2012-0003-0001>

View Comments already posted

<http://www.fhfa.gov/Default.aspx?Page=89&ListNumber=5&ListID=21591&ListYear=2012&SortBy=#21591>

PACENow Taking Points

<http://pacenow.org/blog/wp-content/uploads/FHFA-Talking-Points-02-08-12-21.pdf>

Template Letter

<http://pacenow.org/blog/wp-content/uploads/FHFA-ANPR-Template-Letter-15.docx>