



1100 K Street  
Suite 101  
Sacramento  
California  
95814

Telephone  
916.327-7500

Facsimile  
916.441.5507

## PROPERTY ASSESSED CLEAN ENERGY PROGRAM

**REQUESTED ACTION:** Support the *PACE Assessment Protection Act of 2011* (HR 2599), which would prevent federal housing regulators from adopting policies that contravene established state and local property assessed clean energy (PACE) laws.

**BACKGROUND:** PACE is a cost-effective program that enables local governments to finance renewable energy and energy efficiency projects on privately owned residential and commercial property. Under PACE, property owners elect to have up to 100 percent of the cost of clean energy improvements added to their property tax bill as an assessment or special tax. The assessment is secured by a lien on the property and is not an obligation of the individual property owner. Participation in PACE programs is purely voluntary.

In 2010, the Federal Housing Finance Agency (FHFA), which oversees Fannie Mae and Freddie Mac, issued orders that effectively shut down PACE loans across the country. In halting implementation of PACE, FHFA expressed a series of concerns with the program, including that first liens established by PACE loans pose risk management challenges for existing mortgage lenders.

In response to FHFA's action, Representatives Nan Hayworth (R-NY), Mike Thompson (D-CA) and Dan Lungren (R-CA) introduced the aforementioned legislation to restart stalled PACE initiatives in California and across the country. Under the bill, PACE programs would be defined as property tax assessments rather than loans, as the regulators contend. Additionally, the measure would limit or, in some cases, eliminate any risk to Fannie Mae and Freddie Mac. Despite these assurances, FHFA continues to maintain its reservations about PACE.

In other developments, a federal court in California ruled in August of last year that FHFA violated the Administrative Procedures Act when it issued its 2010 statement that halted PACE programs. As a result, the court ordered the agency to proceed through a formal rulemaking process on its PACE directives. The court, however, did not rescind the 2010 statement.

Although FHFA has appealed the decision, the agency has been directed to start a public notice and comment process. Accordingly, FHFA posted an Advanced Notice of Proposed Rulemaking (ANPR) in the *Federal Register* in late January. The notice poses a number of questions regarding PACE and requests comments from stakeholders on several different aspects of the program.

**Contacts:** Hasan Sarsour, Waterman & Associates, (202) 898-1444  
Karen Keene, CSAC, (916) 327-7500, Ext. 511  
Cara Martinson, CSAC (916) 327-7500, Ext. 504