

Congress of the United States
House of Representatives
Washington, D.C. 20515

July 2, 2010

The Honorable Timothy Geithner
Secretary of the Treasury

The Honorable Steven Chu
Secretary of Energy

The Honorable Edward DeMarco
Acting Director
Federal Housing Finance Agency

Dear Secretaries Geithner and Chu and Acting Director DeMarco:

We are writing with regard to the innovative energy efficiency financing mechanism known as property-assessed clean energy (PACE) programs. Where these programs are being implemented they are enabling American cities to reduce their need for energy while reducing the energy cost burden borne by their residents. We are requesting your agencies' full cooperation in establishing guidelines that will allow these programs to continue while protecting taxpayers and private lenders.

PACE programs allow municipalities to invest in projects that reduce energy consumption and greenhouse gas emissions by using special-improvement or other districts to finance building energy efficiency projects. Municipalities are able to obtain funding because they are assured repayment through tax liens on the properties that receive the improvements. Homeowners repay these public investments in their properties through an assessment on their property taxes. Well-designed PACE programs cover only cost-effective measures, which enable owners to meet this expense with the savings that accrue as a result of reduced monthly energy bills. This structure also provides that the repayment obligation remains with the house, not the homeowner, when a property is sold.

PACE programs help overcome several obstacles that inhibit investments in energy efficiency. First, property owners are often unable to afford the up-front capital costs of even cost-effective energy efficiency improvements. They may also be reluctant to undertake efficiency investments if they do not anticipate owning the property throughout the entire payback period. PACE programs directly ameliorate those barriers. Additionally, municipalities see PACE programs as a way to promote efficiency beyond publicly-owned facilities and help address the energy consumption of individual residents. This also helps reduce transaction costs by promoting systematic efficiency improvements over individually-arranged retrofits. Both Congress and the Administration have endorsed the use of these vehicles for retrofitting homes for greater energy efficiency.

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As a relatively new form of financial assistance to homeowners, however, important questions have arisen with regard to the effects of PACE programs on pre-existing mortgages and the financial institutions that hold those mortgages, including those held by Fannie Mae and Freddie Mac. On May 5, 2010, Fannie Mae and Freddie Mac issued letters construing PACE financing commitments as loans, and indicating that "the terms of Fannie Mae/Freddie Mac Uniform Security Instruments prohibit loans that have senior lien status to a mortgage." Because tax-based obligations create a senior lien, homeowners who are already participating in PACE financing and whose mortgages are held by these enterprises are now in jeopardy of being in violation of the terms of their mortgages. At the same time, States and localities see these letters as a challenge to their authority to serve public interest objectives through their tax codes. As a result, PACE programs, including many that were funded by the American Recovery and Reinvestment Act, have a questionable status.

We urge you to work together to quickly resolve the uncertainty surrounding PACE programs. It is our hope that your offices can quickly identify, agree on, and publish guidelines that would allow PACE financing programs to continue while ensuring that both taxpayer and private mortgage investments are protected. In the meantime, we ask that homeowners participating in the pioneering PACE programs already in operation be immediately assured that they are not in violation of their loans. We request that you please provide us with a timeline and process under which you propose to address the outstanding federal concerns regarding PACE programs by July 12, 2010.

If you have any questions regarding this request, please contact us or ask your staff to contact John Jimison with the Committee on Energy and Commerce staff at (202) 225-4407.

Sincerely,



Henry A. Waxman
Chairman
Committee on Energy and Commerce



Barney Frank
Chairman
Committee on Financial Services

Cc: Joe Barton
Ranking Minority Member, Committee on Energy and Commerce

Spencer Bachus
Ranking Minority Member, Committee on Financial Services