

Resolution No. 17

Date: September 25, 2010

City: New York, NY

NAHB Resolution

Title: Property Assessed Clean Energy (PACE) Programs
Sponsors: Colorado Association of Home Builders
Housing Finance Committee
Submitted by: Skip Howes

WHEREAS, Property Assessed Clean Energy (PACE) financing programs have been established by states and local municipalities as a means to finance energy efficient retrofits for residential and commercial properties; and

WHEREAS, PACE programs eliminate the high upfront costs that have kept homeowners from making cost-saving energy upgrades; and

WHEREAS, PACE programs could increase business opportunities for builders/remodelers, equipment manufacturers and building materials suppliers; and

WHEREAS, the PACE structure is a variation of special assessments that may be imposed by local governments to finance local economic development and infrastructure projects. The assessment may only finance qualified investments as defined in the program and are repaid through add-ons to tax bills of property owners, and passed on to subsequent purchasers of the participating properties, until the assessment is paid off; and

WHEREAS, to date, 21 states, the District of Columbia, and hundreds of local governments are developing PACE programs that are supported by over \$100 million in federal funds (including stimulus funds from the *American Recovery and Reinvestment Act*); and

WHEREAS, PACE programs have been encouraged by The Department of Energy (DOE) and Vice President Biden's Office as an economic way to finance energy retrofits. The White House and DOE issued a "*Policy Framework for PACE Financing Programs*" in October 2009, that outlined the federal role in PACE programs and on May 7, DOE issued best practice guidelines to implement the October 2009 Policy Framework, including strict guidelines for PACE programs designed to protect consumers and eliminate risk to mortgage lenders; and

WHEREAS, in most programs, PACE liens have automatic first lien priority over previously recorded mortgages, a fact that has raised concerns at Fannie Mae and Freddie Mac and their regulator, the Federal Housing Finance Agency (FHFA), since in the event of a default of a mortgage with a PACE lien, Fannie and Freddie would be subordinate to the municipality in repayment; and

WHEREAS, FHFA also has raised concerns about the risks that PACE liens create for homeowners due to the lack of appropriate underwriting standards and lender consent to the PACE lien; and

WHEREAS, FHFA has reiterated that Fannie Mae/Freddie Mac Uniform Security Instruments prohibit liens that are senior to a mortgage that Fannie/Freddie would purchase, meaning that they may not purchase mortgages that have an energy related lien that is senior to the mortgage; and

WHEREAS, FHFA issued a statement on July 6 that it has determined that PACE programs with a priority lien position to existing mortgages present significant safety and soundness concerns to Fannie Mae, Freddie Mac and the Federal Home Loan Banks and has directed these entities to address these concerns through tighter underwriting requirements and enhanced lender due diligence, including ensuring that loan covenants require approval/consent for any PACE loan; and

WHEREAS, the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) also released statements on PACE bonds echoing FHFA's concerns and advising banks that invest in mortgage securities with PACE liens to consider the impact of the lien on the security valuation; and

WHEREAS, these regulatory statements have effectively shut down PACE programs. Fannie and Freddie are expected to come out with more specific guidance for their seller/servicers, which could require borrowers to seek permission from lenders on each lien and/or could tighten lending standards for all borrowers in jurisdictions that have PACE programs; and

WHEREAS, to date the state of California, Sonoma County, the Town of Babylon and the Sierra Club have all either filed, or announced filing, of a suit against the FHFA challenging the authority of federal regulators to restrict the ability of local governments to use their tax assessment authority and the FHFA's classification of PACE programs as loans rather than local government assessments. The suits also assert that, FHFA's actions have hurt energy conservation efforts and related job creation; and

WHEREAS, legislation has been introduced in the House of Representatives (H.R. 5766) and the Senate (S. 3642) to ensure that Fannie Mae and Freddie Mac underwriting guidelines facilitate the use of PACE financing, and

WHEREAS, PACE programs and concerns related to the tax lien position in the mortgage finance system were discussed extensively by NAHB's *Task Force on Jobs Creation via Energy Efficiency Retrofits*, which recommended that the Housing Finance Committee work in a coalition with state and local governments and federal regulators to establish a PACE model and best practices, and to explore alternatives in PACE programs to address concerns with the subordinate lien position, and this work is still ongoing.

NOW, THEREFORE, BE IT RESOLVED that the National Association of Home Builders (NAHB) work with Congress, financial regulatory agencies, including the Federal Housing Finance Agency, and state and local governments, and participants in the housing and mortgage lending industries to resolve impediments to the effective use of Property Assessed Clean Energy (PACE) Programs as a means to finance energy retrofits in a manner that does not impair the functioning of the housing finance system.

Board of Directors Action:	Approved
Executive Board Action:	Recommends Approval
Resolutions Committee Action:	Recommends Approval
Housing Finance Committee Action:	Recommends Approval
Construction, Codes and Standards Committee Action:	Recommends Approval
State and Local Government Affairs Committee Action:	Recommends Approval
NAHB Remodelers Action:	Recommends Approval
Federal Government Affairs Committee Action:	Recommends Approval
Energy Subcommittee of the Construction Codes and Standards Committee Action:	Recommends Approval