Attachment A

Resolution of the Board of Supervisors of the County of Santa Barbara Addressing the Concerns of the Federal Housing Finance Agency Relating to emPowerSBC Financing for Residential Properties

RESOLUTION OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA

RESOLUTION NO. _____

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA BARBARA ADDRESSING THE CONCERNS OF THE FEDERAL HOUSING FINANCE AGENCY RELATING TO EMPOWERSBC FINANCING FOR RESIDENTIAL PROPERTIES

WHEREAS, the County of Santa Barbara ("County") is authorized under Chapter 29 of Part 3 of Division 7 of the Streets & Highways Code of the State of California ("Chapter 29") to levy contractual assessments to finance the installation of distributed generation renewable energy sources and energy efficiency and water efficiency improvements that are permanently fixed to residential, commercial, industrial, agricultural, or other real property ("Authorized Improvements"); and

WHEREAS, Chapter 29 authorizes the County to enter into contractual assessments to finance the installation of Authorized Improvements; and

WHEREAS, on April 13, 2010, pursuant to Resolution No. 10-098, the Board of Supervisors established the County's "Elective Municipal Programs to Optimize Water, Energy, and Renewables for Santa Barbara County" (the "emPowerSBC Program") within the boundaries of the County; and

WHEREAS, on July 6, 2010, the Federal Housing Finance Agency issued the Statement attached hereto as Exhibit A (the "Statement"); and

WHEREAS, as a result of the Statement and in order to avoid any adverse impact on residential property owners in the County as a result of the emPowerSBC Program, the Board of Supervisors wishes to declare that, as long as the Statement is in effect, the County will not accept applications for the emPowerSBC Program from residential properties or provide financing through the emPowerSBC Program to residential property owners in the County;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Santa Barbara as follows:

1. Recitals. The above recitals are true and correct.

2. Conduct of emPowerSBC Program for Residential Properties. The Board of Supervisors hereby orders that, as long as the Statement is in effect, the County shall not accept applications for the emPowerSBC Program from residential properties in the County or provide financing through the emPowerSBC Program for residential properties in the County.

The Board of Supervisors hereby orders that, except as provided in the previous sentence, the emPowerSBC Program shall remain in full force and effect.

3. Effective Date. This resolution shall take effect immediately upon its adoption.

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PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Santa Barbara held on this 13th day of July, 2010, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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CHAIR, BOARD OF SUPERVISORS

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

By: ________________________
Deputy

APPROVED AS TO FORM:

DENNIS A. MARSHALL
COUNTY COUNSEL

By: ________________________
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:

ROBERT GEIS
AUDITOR-CONTROLLER

By: ________________________

Exhibit A

Federal Housing Finance Agency Statement

FEDERAL HOUSING FINANCE AGENCY

STATEMENT

For Immediate Release
July 6, 2010

Contact: Corinne Russell (202) 414-6921
Stefanie Mullin (202) 414-6376

FHFA Statement on Certain Energy Retrofit Loan Programs

After careful review and over a year of working with federal and state government agencies, the Federal Housing Finance Agency (FHFA) has determined that certain energy retrofit lending programs present significant safety and soundness concerns that must be addressed by Fannie Mae, Freddie Mac and the Federal Home Loan Banks. Specifically, programs denominated as Property Assessed Clean Energy (PACE) seek to foster lending for retrofits of residential or commercial properties through a county or city's tax assessment regime. Under most of these programs, such loans acquire a priority lien over existing mortgages, though certain states have chosen not to adopt such priority positions for their loans.

First liens established by PACE loans are unlike routine tax assessments and pose unusual and difficult risk management challenges for lenders, servicers and mortgage securities investors. The size and duration of PACE loans exceed typical local tax programs and do not have the traditional community benefits associated with taxing initiatives.

FHFA urged state and local governments to reconsider these programs and continues to call for a pause in such programs so concerns can be addressed. First liens for such loans represent a key alteration of traditional mortgage lending practice. They present significant risk to lenders and secondary market entities, may alter valuations for mortgage-backed securities and are not essential for successful programs to spur energy conservation.

While the first lien position offered in most PACE programs minimizes credit risk for investors funding the programs, it alters traditional lending priorities. Underwriting for PACE programs results in collateral-based lending rather than lending based upon ability-to-pay, the absence of Truth-in-Lending Act and other consumer protections, and uncertainty as to whether the home improvements actually produce meaningful reductions in energy consumption.

Efforts are just underway to develop underwriting and consumer protection standards as well as energy retrofit standards that are critical for homeowners and lenders to understand the risks and rewards of any energy retrofit lending program. However, first liens that disrupt a fragile housing finance market and long-standing lending priorities, the absence of robust underwriting standards to protect homeowners and the lack of energy retrofit standards to assist homeowners, appraisers, inspectors and lenders determine the value of retrofit products combine to raise safety and soundness concerns.

On May 5, 2010, Fannie Mae and Freddie Mac alerted their seller-servicers to gain an understanding of whether there are existing or prospective PACE or PACE-like programs in jurisdictions where they do business, to be aware that programs with first liens run contrary to the Fannie Mae-Freddie Mac Uniform Security Instrument and that the Enterprises would provide additional guidance should the programs move beyond the experimental stage. Those lender letters remain in effect.

Today, FHFA is directing Fannie Mae, Freddie Mac and the Federal Home Loan Banks to undertake the following prudential actions:

1. For any homeowner who obtained a PACE or PACE-like loan with a priority first lien prior to this date, FHFA is directing Fannie Mae and Freddie Mac to waive their Uniform Security Instrument prohibitions against such senior liens.

2. In addressing PACE programs with first liens, Fannie Mae and Freddie Mac should undertake actions that protect their safe and sound operations. These include, but are not limited to:

   - Adjusting loan-to-value ratios to reflect the maximum permissible PACE loan amount available to borrowers in PACE jurisdictions;

   - Ensuring that loan covenants require approval/consent for any PACE loan;

   - Tightening borrower debt-to-income ratios to account for additional obligations associated with possible future PACE loans;

   - Ensuring that mortgages on properties in a jurisdiction offering PACE-like programs satisfy all applicable federal and state lending regulations and guidance.

   Fannie Mae and Freddie Mac should issue additional guidance as needed.

3. The Federal Home Loan Banks are directed to review their collateral policies in order to assure that pledged collateral is not adversely affected by energy retrofit programs that include first liens.

Nothing in this Statement affects the normal underwriting programs of the regulated entities or their dealings with PACE programs that do not have a senior lien priority. Further, nothing in these directions to the regulated entities affects in any way underwriting related to traditional tax programs, but is focused solely on senior lien PACE lending initiatives.

FHFA recognizes that PACE and PACE-like programs pose additional lending challenges, but also represent serious efforts to reduce energy consumption. FHFA remains committed to working with federal, state, and local government agencies to develop and implement energy retrofit lending programs with appropriate underwriting guidelines and consumer protection standards. FHFA will also continue to encourage the establishment of energy efficiency standards to support such programs.

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