

PACE Developments Since 2010

Since 2010, several attempts at legislation and lawsuits have failed to remedy FHFA's concerns about PACE. A timeline, including key FHFA directives, is provided in Attachment F. Notably, in 2013, the 9th Circuit Court held that the FHFA directive to Freddie Mac and Fannie Mae not to purchase mortgage loans secured by properties with outstanding first lien PACE obligations was a lawful exercise of FHFA's power as a conservator of Freddie Mac and Fannie Mae (*County of Sonoma v. Federal Housing Finance Agency* (2013) 710 F.3d 987).

In 2013, California's Governor Brown announced a \$10 million PACE loss reserve program to cover losses to mortgage lenders associated with PACE (California Senate Bill 96 (2013)). However, FHFA's May 2014 response (Attachment G) indicated that the reserve would not alleviate their concerns. Meanwhile, the White House, U.S. Department of Housing and Urban Development and the Federal Housing Administration continue to have discussions regarding PACE and, on August 24, 2015, released statements that new PACE guidance, to be issued soon, will be designed to "remove existing barriers and accelerate the use of PACE financing for single family housing."

Despite the issues outlined above, approximately 447 municipalities in California have proceeded to adopt residential and commercial PACE programs according to PACENation, an association of people and organizations supporting PACE financing. HERO, one of the largest residential PACE providers in the State, states that its PACE financing product is currently available in 378 jurisdictions in California within 38 counties and has financed 61,085 projects, most of which are residential projects, totaling over \$1.26 billion. To address FHFA concerns, some residential PACE administrators like HERO and CaliforniaFIRST claim to be willing to facilitate "contractual subordination" of the lien upon transfer of property when required by the lender. However, it is unclear how these administrators are actually performing contractual subordination.

On July 6, 2010, the U.S. Office of Comptroller of the Currency, which regulates commercial banks, also issued guidance to alert national banks to concerns and regulatory expectations regarding PACE programs (Attachment B). Since the release of the OCC statement, several jurisdictions in California have moved forward with commercial PACE. According to program administrators, commercial PACE might be viewed as a different proposition in terms of risk when compared with residential PACE due to the fact that in most cases, there is an existing commercial lender that consents to the PACE assessment before the lien is placed. Commercial property owners might evaluate the PACE improvement from an economic perspective to determine whether the improvements offer cash flow benefits and value enhancement which might further reduce the risk of default.