

1 BRUCE D. GOLDSTEIN
 County Counsel
 2 KATHLEEN A. LAROCQUE
 Chief Deputy County Counsel
 3 kathleen.larocque@sonoma-county.org
 PHYLLIS C. GALLAGHER
 4 Deputy County Counsel
 phyllis.gallagher@sonoma-county.org
 5 County of Sonoma
 575 Administration Drive, Room 105
 6 Santa Rosa, California 95403-2815
 Telephone: (707) 565-2421
 7 Fax: (707) 565-2624

8 *Attorneys for Plaintiff County of Sonoma*

9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 11

12 **COUNTY OF SONOMA,**

13 **Plaintiff,**

14 **v.**

15 **FEDERAL HOUSING FINANCE AGENCY;**
 16 **et al.,**

17 **Defendants.**

Case No. 10-cv-03270 CW

Related Case Nos.:

- 10-cv-03084 CW
- 10-cv-03317 CW
- 10-cv-04482 CW

~~PROPOSED~~ PRELIMINARY INJUNCTION

18 _____
 19 **– and related cases –**
 20

21 For the reasons set forth in the Court’s Order of August 26, 2011, the Motion of Sonoma
 22 County for a Preliminary Injunction is GRANTED.

23 The Federal Housing Finance Agency (FHFA), without withdrawing its July 6, 2010
 24 statement or its February 28, 2011 letter, shall proceed with the notice and comment process with
 25 regard to those directives. Specifically, FHFA shall do the following:

- 26 (1) No later than 30 days after the issuance of this order, FHFA shall cause to be published
- 27 in the Federal Register an Advance Notice of Proposed Rulemaking relating to the statement
- 28 issued by FHFA on July 6, 2010 and the letter issued by FHFA on February 28, 2011 that deal

1 with property assessed clean energy (PACE) programs. In the Advance Notice of Proposed
2 Rulemaking, FHFA shall seek comments on, among other things, whether conditions and
3 restrictions relating to the regulated entities' dealing in mortgages on properties participating in
4 PACE are necessary; and, if so, what specific conditions and/or restrictions may be appropriate.
5 The comment period shall not be less than 60 days.

6 (2) After considering any public comments received related to the Advance Notice of
7 Proposed Rulemaking, but no later than 30 days after the close of the comment period, FHFA
8 shall cause to be published in the Federal Register a Notice of Proposed Rulemaking setting forth
9 FHFA's proposed rule relating to PACE programs. The comment period shall not be less than 30
10 days.

11 (3) After considering any public comments received concerning the proposed rule, on or
12 before April 30, 2012, FHFA shall cause to be published in the Federal Register a final rule
13 addressing whether and how Fannie Mae, Freddie Mac, and other regulated entities shall deal
14 with mortgages on properties participating in PACE programs.

15 If circumstances beyond FHFA's control prevent FHFA from meeting a deadline in this
16 Order, FHFA may request an extension from the Court. For good cause shown, the Court may
17 grant a reasonable extension, which shall be no longer than is necessary to allow FHFA to comply
18 with its rulemaking responsibilities. FHFA shall comply with all relevant provisions of the
19 Federal Administrative Procedure Act, 5 U.S.C. section 500 *et seq.*, that apply to substantive rule-
20 making.

21 The obligations set forth in this Order shall cease to apply if FHFA formally withdraws its
22 July 2010 statement and February 2011 letter and directs the regulated entities to retract any
23 lender letter, industry bulletin, or other guidance issued by them in response to the July 2010
24 statement or February 2011 letter.

25 Nothing in this Order shall be construed to limit or modify the discretion accorded FHFA as
26 regulator and Conservator of Fannie Mae and Freddie Mac, including without limitation, by the
27 Safety and Soundness Act or by principles of administrative law.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiffs retain the right to challenge any final agency action or regulation as provided by law.

Nothing in this Order shall relieve FHFA from its obligation to comply with the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*

Date: 9/13/2011


Honorable Claudia Wilken
United States District Judge