As I suspected, we've got a lawsuit over the Federal Housing Finance Administration
(FHFA) and Fannie Mae and Freddie Mac's position on Property Assessed Clean Energy
(PACE). (Background on PACE and the controversy here.) California Attorney General Jerry
Brown announced today that his agency is suing these entities in federal court over their
unwillingness to guarantee mortgages on properties with PACE assessments.   You can read
the complaint here.

The Attorney General is arguing that FHFA and Fannie and Freddie violated the National
Environmental Policy Act (NEPA) (and possibly a state statute governing unfair business
practices) by failing to analyze the environmental impacts of their agency actions. Agency
statements on PACE have effectively killed the promising clean energy program, which is an
innovative program to help building owners finance energy efficiency retrofits, solar arrays,
and other environmental improvements. Some key issues for the court to decide will be
whether the FHFA statement and Fannie and Freddie lender letters on PACE, which are the
sources of the controversy, represent "final administrative determinations" subject to NEPA
review and whether these letters will actually stop PACE programs or just diminish their
effectiveness.

A successful suit could result in an injunction preventing FHFA and Fannie and Freddie
from interfering in any way with customers who have received PACE assessments or may
sign up for them in the future. The court could also compel FHFA to conduct an
environmental assessment or review of their actions on PACE. But even with an injunction
and further environmental review, PACE advocates will need long-term certainty that FHFA
will not be able to interfere with PACE properties going forward. Until that question is
resolved, the program is not entirely safe. But this lawsuit could bring PACE back from the
dead, seriously weaken FHFA's case that they have the right to interfere with local
government property assessments, and buy more time and analysis to resolve these issues
once and for all.