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.