

Federal Judge Claudia Wilken, who has been presiding over the [West Coast lawsuit](#) to overturn federal housing policy and restore residential PACE energy financing programs, made her August ruling final today. [As you may recall](#), Judge Wilken [ruled](#) in August that the Federal Housing Finance Authority (FHFA) would have to pursue a notice-and-comment rulemaking on its [policy](#) to stop underwriting residential mortgages with PACE liens.

Judge Wilken let the current FHFA policy stand rather than vacate it pending the outcome of the rulemaking process. However, she did require the parties to agree on a reasonable timetable for the rulemaking. As a result, FHFA wouldn't be able to drag its feet for year and years. Now, today's decision (no link yet) states that FHFA must issue a final rule 210 days from now, with an update for the court by January 18, 2013. FHFA may request an extension if the agency has "good cause" to do so.

So the clock is now ticking on a final rule from FHFA. I see three possible outcomes for PACE in the medium term.

1) FHFA will issue a rule essentially mirroring its current policy. This seems like the most likely outcome to me. Lawsuits will follow, probably on Administrative Procedure Act grounds that the agency's decision does not follow from the evidence and comments received. The agency could also be sued under the National Environmental Policy Act (NEPA) for not undertaking an environmental analysis of the action, which might be a first for a financial rule (to my limited NEPA knowledge anyway). Either way, this path would probably require a few years to resolve in court.

2) The results of the presidential election mean new agency management at FHFA, which could overturn this policy. I'm not clear how the politics shake out here. On one hand, the current FHFA head, appointed by Bush, could be fired by Obama now. But Obama hasn't pulled the trigger or forced a change to PACE policy, indicating the FHFA position may have support within the broader Obama Administration. A Romney victory might result in a new agency head perhaps more sympathetic to municipal financing schemes like a PACE program. But then again, Mr. "I Like Coal" probably isn't excited about preserving local programs designed to boost energy efficiency and renewables.

3) Congressional action overturns the FHFA decision. The politics of the moment, however, do not favor this outcome. While PACE has [bipartisan fans](#) in Congress, advocates will likely need 60 votes in the Senate to defeat the myriad proposed amendments on any environmental bill that would have little to do with PACE (like amendments to stop EPA from regulating greenhouse gases).

In the long term, I believe PACE for residential properties will be restored across the country. The current FHFA policy seems based on fear, ignorance, looming budget cutbacks, and concerns over federal exposure in the housing market. Once these factors dissipate, PACE will no longer be a threat, and advocates will have more success stories to rely on to make their case. But until then, Judge Wilken may be the policy's best hope.