

From: Matthew D. Rudikoff <mrudikoff@rudikoff.com>  
Sent: Tuesday, September 11, 2012 1:14 PM  
To: !FHFA REG-COMMENTS  
Subject: FW: PACE FHFA Rulemaking --- RIN 2590-AA53

636 Wittenberg Road  
Mt. Tremper, NY 12457

September 12, 2012

Alfred M. Pollard, General Counsel

FHFA

Washington, D.C.

RE: RIN 2590-AA53 – Comments – FHFA Rulemaking in Connection with PACE  
Financing

Dear FHFA General Counsel Pollard:

The following comments are submitted in connection with the FHFA Rulemaking RIN 2590-AA53. I have read the Proposed Rule and I am a private citizen and business person aware of and informed about PACE factors under discussion at this time; among and between the various stakeholder communities involved in determining if and how a PACE program might proceed in light of mortgage lender factors.

I am also involved in various economic development initiatives and strategies, energy retrofit projects as well as having had experience as a consultant, performing services in connection with addressing the planning for and amelioration of lender risk in connection with real estate lending and contamination principal responsible party concerns.

My interest in the Rule making is to advance the development and national growth of what will be a very robust and substantial energy loan tax assessment program business comprised of an integrated market of participating lenders in the mortgage, investment, and public finance sectors, energy retrofit advocates, the Enterprises and lending regulators, PACE State enabling legislation proponents and adopters, property owners and the multiple segments of the energy retrofit business including contractors, energy retrofit equipment manufacturers, technology developers and supply and services providers.

The degree and level of involvement of the various sectors and the resources and efforts put into creating PACE programs, legislation, rules, etc is indicative of the recognition of the highly consequential national scaled economic impact, business interests and environmental resource protective impact potential for the national economy in connection with a fully deployed and robust PACE industry...as long as stakeholder interest is adequately identified and provided for.

I observed in reviewing the proposed Rule and the comments submitted to FHFA that the Joint Trade Association (ABA, et al), FreddieMac and other comments address lender risk, underwriting, property values and other factors in various ways and make

the particular point that the added risk was “uncompensated”. I believe that concern is correct; in that current PACE program formulations and operating rules do in various ways need or require the participation of the existing mortgage lender in certification or approval to expanding properties’ tax super lien to include a new property owner sought energy retrofit assessment.

Through my familiarity with the current PACE program development efforts, the expressed and apparent concerns of various stakeholders and through my intergovernmental relations consulting business experience at Matthew D. Rudikoff Associates, Inc (www.rudikoff.com) and as Executive Director of the Institute for Public Financial Incentives, L3C website (www.ipfi-l3c.org) it is clear that efforts to demonstrate, quantify and place a value on the level, severity or frequency of PACE events of default alone is both not possible at this early stage of PACE and also NOT the path to addressing stakeholder concerns and facilitating the advancement of a PACE industry which would be so beneficial in terms of economic stimulus and national energy policy objectives.

While municipal and investment bankers, state and local governments, energy retrofit advocates and industry support PACE program development for its massive consequential potential business and energy savings impacts -- mortgage bankers have been largely left “out in the cold” in terms of formulating underwriting criteria, being compensated for their administrative, underwriting and certification issuing efforts as well as for the new risk; be it theoretical, high or low and the changing of property value and other underwriting criteria utilized in reviewing and approving the extant in-place mortgages.

In light of that, the proposed FHFA Rule voices and makes determinations in connection therewith which are either under or over stringent depending on the level of risk assessment, underwriting costs, fiduciary responsibility to shareholders and other vantage points.

What is made clear though is that if mortgage bankers saw fit to identify PACE program activity as a desirable profit center which it was decided to pursue, the FHFA Rule makes it almost impossible for mortgage lenders to participate in making certifications, purchasing PACE lien mortgages, insuring mortgages, or declaring in default PACE lien properties’ mortgages, etc. except possibly under certain proposed Risk Mitigating Alternatives stated in the proposed Rule.

The Proposed Rule’s three (3) Risk Mitigating Alternatives which properly identifies criteria, conditions, and requirements are an amalgamation of other program, agency, legislation provisions or new instruments, including new insurance products, which could create circumstances under which or in compliance with mortgage lenders could participate as prescribed.

However, those formulations are offered primarily, and properly, from the FHFA lender regulatory perspective to protect member bank interests and other responsibilities. What is missing is the practical impact the Rule’s provisions would have on the feasibility of PACE program activities which can be arrived at through a dialogue among all stakeholders as to how an energy loan tax assessment program and industry can grow and flourish addressing mortgage lender and regulatory concerns while preserving the beneficial aspects of PACE as an alternative retrofit financing mechanism and advancing the energy retrofit lending and construction businesses.

With that focus, it is recommended that a 4th Risk Mitigating Alternative be developed

while holding the Rule promulgation in abeyance until the time that all parties can agree on the details of the new Risk Mitigating Alternative. The new Risk Mitigating Alternative would be comprised of the results of a continued working dialogue between the PACE community, the mortgage banking industry and other stakeholders to identify a basis on which PACE can move forward.

What has clearly been demonstrated during the development of PACE is that it is very much in the interest of the municipal bond purchasing and capital warehousing community and the investment banking community for ELTAP debt to be generated which can be loaned, leveraged and serviced and will be a very substantial business as PACE grows.

Evidencing that is Goldman Sach's Ken Connolly's and Barclay's Chris Moriarity's participation in the PACENow Working Group supporting the development of PACE.

While changes in the long accepted community infrastructure financing model such as construction supervision O&M of the financed improvements being provided by individual homeowners as opposed to O&M responsibility by the finance issuing agency; first and foremost, of concern, is that mortgage lending community is left out of the profitability and even believe PACE was sprung on them from behind their backs.

Since the implementation of PACE programs is evidently in the national interest as evidenced by the range of commentors and the existence of other State and Federal Agency stakeholders it is incumbent on the FHFA not only to promulgate rules fulfilling their regulatory responsibility but to fulfill a highly functional governmental role by encouraging the constructive inter-Agency dialogue incorporating input from a combined working group charged with both the objective of banking regulation and of PACE program deployment.

I suggest that the investment banking community and public capital providing community represented by Moriarty and Connolly or others be requested to help initiate and moderate a dialogue with the PACE community, mortgage banking community, through the ABA's governmental and community relations executive staff, the Enterprises, Regulator Community, DOE, EPA, and others which would result in the development of standard national guidelines which would establish the acceptable terms and conditions under which PACE projects, mortgage lenders, regulators and PACE business can proceed.

The most important outcomes of this dialogue would be:

1. The establishment of a first mortgage lender standardized PACE Lien certification and underwriting processing fee structure (payable with PACE assessment funding).
2. The establishment of PACE Program underwriting criteria and standards.
3. Application procedures and information.
4. Insurance product definitions, requirements and structure, etc.
5. Non acceleration requirements and conditions upon property change in ownership
6. Other

To advance this dialogue, it is recommended that FHFA suggest in conjunction with the ABA, that at the ABA's annual Real Estate Lending Conference in New Orleans April 10-12 that topics or panels be placed on the Agenda which would present and discuss PACE related Regulatory, impacts and implementation issues.

Further, to advance this dialogue it is suggested that the PACE community attend or have a booth at the conference and be an exhibitor or panelist to engage individual mortgage lending banker executives in conversation about how PACE can be good for the bank and the community (and about the idea that they should be properly compensated), etc.

FHFA is requested to delay its Rule making until that dialogue can be incorporated into a new Alternative Proposal to be considered in the Rule making.

By copy of this letter to other stakeholders and officials I am urging that a collaboration between stakeholders can address both industry and government stakeholders which can allow the advancement of PACE programs allowing for business, energy policy objectives and homeowner interests to be addressed in a triple bottom line fashion.

Thank you for your attention.

Sincerely,

Matthew D. Rudikoff

Matthew D. Rudikoff

---

Matthew D. Rudikoff, President  
Matthew D. Rudikoff Associates, Inc.  
Phn: (845) 831-1182 Ext. 102  
Fax: (845) 831-2696  
www.rudikoff.com

PERSONAL & CONFIDENTIAL...The information transmitted herein, including any attached files, may contain proprietary, privileged and/or confidential material. Any disclosure, copying, distribution or other use of, or taking of any action in reliance upon, information contained herein or attached hereto by persons or entities other than the intended recipient(s) is prohibited. Any misdirection or other error in the transmission of this information is not and shall not be considered a waiver of any applicable privileges. If you have received this transmission in error, please immediately notify the sender and destroy the original transmission and its attachments without saving, distributing or copying in any manner.