



September 13, 2012

Mr. Alfred Pollard, General Counsel
Attn: Comments/RIN 2590-AA53
Federal Housing Finance Agency, Eighth Floor
400 Seventh Street, SW.
Washington, DC 20024

Dear Mr. Pollard:

These comments are submitted on behalf of the National Association of State Energy Officials (NASEO). We write to express our objection to the premise of the Notice of Proposed Rulemaking (NPR) that Property Assessed Clean Energy (PACE) programs materially increase financial risks to Fannie Mae and Freddie Mac (the Enterprises), and to the Proposed Rule, which continues to block PACE. The Federal Housing Finance Agency (FHFA) must issue a final rule based on facts, not assertions, and consider the environmental impacts of its actions and substantial public interest in PACE. As set forth below, we propose an alternative that is consistent with the evidence and would allow PACE to proceed.

NASEO represents the 56 state and territorial energy offices and supports a balanced national energy policy. NASEO members serve as their Governors' energy policy advisors and help develop and implement energy policies and programs, working to promote economic development, energy innovation and sound approaches to energy problems.

More than 30,000 comment letters in response to FHFA's Advance Notice of Proposed Rulemaking (ANPR) supporting PACE were submitted by state and local governments, federal and state elected officials, banks, real estate developers, energy companies, and organizations representing millions of Americans. Those comments cited numerous studies, articles, legal decisions and other sources providing evidence that PACE increases the value of homes, reduces homeowners' energy costs (thereby making mortgage repayment more likely), grows jobs and economic activity, and helps local and state governments meet their energy goals. FHFA must not ignore the substantial weight of the evidence in the record establishing that PACE does not pose material risks to the Enterprises.

FHFA's Proposed Rule challenges the well-established authority of local and state governments to finance improvements with a valid public purpose through assessments, and imperils an extremely effective means of creating jobs, ensuring energy security and protecting public health and the environment. State legislatures across the United States have enacted statutes to authorize PACE programs. Fundamentally, we believe that FHFA's position, and the position of the Enterprises, unreasonably impinges on state authority and is unreasonably preempting state authority. FHFA's Proposed Rule is even more draconian and harmful to local government PACE programs than the proposed action cited in the ANPR. In addition to prohibiting the Enterprises from buying mortgages on properties with PACE liens, it allows the Enterprises to make mortgages on such properties immediately due, and would prohibit the Enterprises from consenting to PACE obligations under any conditions.

2107 Wilson Boulevard
Suite 850
Arlington, Virginia 22201
Telephone: 703.299.8800
Facsimile: 703.299.6208
Home page: www.naseo.org

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KATE MARKS

FHFA should adopt a modified version of its Alternative 3 to the Proposed Rule (H.R. 2599 Underwriting Standards). Alternative 3 provides rigorous underwriting criteria and other protections to reduce the risk of default, ensure that PACE-financed improvements add to the value of homes and sufficiently protect the Enterprises from risk perceived by FHFA. As drafted in the NPR, Alternative 3 is not fully workable, because it still requires Enterprise consent to local government assessments for valid public purposes, and does not ensure that the Enterprises will indeed consent even if local governments comply with these rigorous underwriting standards. FHFA should therefore adopt a modified version of Alternative 3 as follows:

So long as all PACE liens are recorded and the Alternative 3 underwriting standards are satisfied, then the Enterprises shall:

1. *not* take actions to make immediately due the full amount of any obligation secured by a mortgage that becomes subject to a first-lien PACE obligation;
2. *be permitted* to purchase mortgages subject to first-lien PACE obligations; and
3. *if requested, consent* to the imposition of a first-lien PACE obligation.

This variation on Alternative 3 provides a solution that is supported by the evidence, can be implemented by local governments right away and will allow PACE programs to move forward.

We also urge the FHFA, in its final rule adopting this modified version of Alternative 3, to leave open the future opportunity to address its concerns through implementation of elements of its proposed Alternative 1 (Guarantee/Insurance). At this time, there is no insurance product in the marketplace or an established reserve fund that protects against “100% of any net loss” as suggested by FHFA, but some form of insurance or loan loss reserve could provide additional risk mitigation in the future. If an insurance product or reserve fund that provides sufficient protection against the risk to the Enterprises perceived by FHFA becomes available, local governments should be permitted to choose whether to utilize such products or comply with the Alternative 3 standards.

We welcome the opportunity to work with FHFA to further refine this modified alternative to the Proposed Rule. FHFA should not close the door to residential PACE when a workable solution is either available now or can be resolved in a collaborative stakeholder process in a relatively short period of time.

In sum, FHFA should adopt Alternative 3 to the Proposed Rule (modified as proposed in these comments), and leave the door open to the future use of insurance or reserve funds that could provide sufficient risk mitigation. This solution enables FHFA to enhance the value of the Enterprises’ portfolio while respecting the rights of local and state governments to protect the public health and safety and allowing this extremely effective engine of job creation to move forward.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Terry", with a stylized flourish underneath.

David Terry
Executive Director
National Association of State Energy Officials