

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:

The Lone Star Chapter of the Sierra Club is the Texas chapter of the Sierra Club. We have some 20,000 members in Texas. One of our primary campaigns – Clean Energy Solutions for Texas – focuses on regulatory and legislative changes that will help bring energy efficiency and renewable energy to scale, as we transition away from traditional fossil fuel generators. The Lone Star Chapter was a strong proponent of HB 1937, passed by the Texas Legislature and signed by the Governor in 2009, which allows municipalities to create PACE for both commercial and residential units. Unfortunately, cities like San Antonio, Austin and El Paso which originally expressed interest in creating these programs have chosen not to move forward in large part because of guidelines imposed by FHFA.

While we appreciate that FMFA has opened this rulemaking, we join thousands of citizens and hundreds of organizations and businesses in expressing our concern and objection to both the Notice of Proposed Rule (NPR) and to the Proposed Rule, which continues to block PACE because of an unduly burdensome requirements on homeowners and banks. Instead, 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. We support an alternative approach that would allow PACE programs to move forward without imposing undue burdens that effectively freeze these important programs.

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 governments meet greenhouse gas reduction and clean 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 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. FHFA's Proposed Rule challenges the well-established authority of local 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.

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 if necessary. 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 governments to protect the public health and safety and allowing this extremely effective engine of job creation to move forward.

On behalf of the Lone Star Chapter of the Sierra Club, and its 20,000 members, we urge the FMFA to adopt a rule that actually allows PACE programs to move forward, and lead to the creation of new jobs and more clean energy resources.

Sincerely,

Cyrus Reed
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