C O W S

center on wisconsin strategy

March 23, 2012

Mr. Alfred Pollard
General Counsel
Federal Housing Finance Agency
400 7th St., N.W.
Washington, DC 20024

RE: RIN 2590-AA53 Mortgage Assets Affected by PACE Programs

Dear Mr. Pollard:

COWS is a nonprofit think-and-do tank that promotes "high road" solutions to social problems. These treat shared growth and opportunity, environmental sustainability, and resilient democratic institutions as necessary and achievable complements in human development. COWS is a longstanding national leader in advancing high-road, new-energy-economy policy and practice. We originated the high-road frame in the competitiveness and development debate. We did the first national work integrating sustainability criteria into federal and state industrial modernization programs. We co-founded and for years co-managed the Apollo Alliance, the first major national effort to bring labor, business, environment, and social justice groups together on a new-energy platform. We have advocated and worked with many mayors and state executives in implementing high-road, new-energy practices. We have published widely on the subject, have worked closely with the Obama administration (both in transition and governance) on national implementation, and are a moving force in the Emerald Cities Collaborative (ECC) and the State Smart Transportation Initiative (SSTI).

Throughout, we have tried to summarize our work in accessible publications and communicate it to a broad audience of policymakers, scholars, and activists. In all cases, we aim to establish programs that are comprehensive (cover all buildings, including single- and multi-family residential, public and institutional buildings, and private commercial and industrial ones), financially sustainable (have mechanisms for generating and capturing value from the work that make them effectively independent of ongoing public or foundation subsidy), equity-promoting (typically through Community Workforce Agreements, ensuring job standards and targeted access for members of area poor neighborhoods, with career ladders for necessary training linked back to those communities), and professionally managed (with requisite administrative and financial competence, quality controls, measurement and verification of results, etc.).

Property Assessed Clean Energy (PACE) programs are state and local government innovation with a high potential to meet most, if not all, of the criteria we outline above. PACE can be used with most buildings, captures the value of energy efficiency work and does not rely on public subsidy, and can be integrated with programs to promote equity and managed in a professional way. PACE programs contribute to reducing our reliance on imported fuel, promoting energy security, avoiding the cost of building new power plants and transmission systems, and protecting the environment. PACE has potential to save homeowners money, create local jobs

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and dramatically reduce energy use. Because of its unique ability to spur homeowner investment in energy efficiency and clean, on-site renewable energy, PACE legislation has passed in 28 states. It has bi-partisan support at the local, state and Federal levels. PACE programs have received public support because they address one of the primary barriers preventing most homeowners from conducting energy efficiency work on their properties: the lack of available capital.

We believe that FHFA's decision to impede local government PACE programs on July 6, 2010 was unwarranted. We appreciate the opportunity, via this rulemaking, to urge you to look for ways to accommodate these broadly beneficial programs. To this end, we recommend that the FHFA adopt reasonable underwriting standards that ensure local PACE programs are designed to maximize benefit and minimize risk, as described below.

1) PACE assessments are valid - and are not "loans" as asserted by FHFA

FHFA has repeatedly referred to PACE assessments as "loans." To the contrary, they are property tax assessments with characteristics similar to those of more than 37,000 other land-secured special assessment districts in the United States that are rooted in hundreds of years of state and local law. Such districts are typically created at the voluntary behest of property owners who vote to allow their local governments to finance public improvements such as sewer systems, sidewalks, lighting, parks, open space acquisitions, and business improvements on their behalf. Other districts allow property owners to act voluntarily and individually to adopt municipally financed improvements to their property that are repaid with assessments. PACE districts are similar to many other special assessment districts as well, in the size of their assessments and length of their repayment period. Challenging PACE is essentially a challenge to the long-established practice of municipal assessment.

2) PACE assessments present minimal risks to lenders, investors, homeowners and GSEs

FHFA asserts that PACE presents "significant safety and soundness" concerns, but there is no evidence that this is true. There is long-standing experience, borne out by studies, that energy efficiency and renewable energy improvements reduce homeowners' energy bills and increase their property's value, strengthening their financial position and increasing the value of a lender's collateral. PACE financed improvements allow homeowners to hedge themselves against fuel price spikes and rising fuel costs over time. These factors lessen, if not eliminate, the safety and soundness risk that the FHFA has asserted. Local governments that established PACE programs prior to the July 6, 2010 action by FHFA developed program standards to protect lenders and consumers. The White House (October 18, 2009) and the Department of Energy (May 7, 2010) both published national PACE guidelines with clear, strong underwriting standards to ensure that homeowners are able to afford the improvements. A bi-partisan bill in the House of Representatives (HR 2599 – Hayworth R-NY19) further delineates national standards to minimize risk to lenders and consumers. Finally, the early results of PACE pilot programs in Boulder County, CO; Sonoma County and Palm Desert, CA; and Babylon, NY; show that PACE presents minimal risk: there are only a handful of known defaults out of nearly 3,200 upgraded properties, substantially fewer than the rate of default for non-PACE property-owners in the same districts.

3) Home energy improvements financed with PACE achieve important economic and environmental benefits

State and local governments have also passed PACE laws because PACE has great potential to help governments attain important economic and environmental goals. For example, according to a May 2011 Department of Energy study, the Boulder County PACE program created over 120 jobs, generated more than $20 million in overall economic activity and reduced consumers' energy use by more than $125,000 in the first year alone. These benefits are important by themselves. In developing a rule that serves the public interest, the FHFA must weigh perceived risks against economic benefits that clearly reduce default rates.

4) Proposed Rule:

We strongly urge you to reconsider your blanket opposition to PACE programs. We recommend that FHFA adopt a rule stipulating that Fannie Mae, Freddie Mac, and any other mortgage lenders regulated by FHFA be allowed to buy residential mortgages with PACE assessments that are originated by programs that conform to standards and guidelines such as those established in HR 2599 (The PACE Assessment Protection Act) to protect the interests of local governments, homeowners, mortgage lenders and Government Sponsored Enterprises (GSEs).

Sincerely,

Joel Rogers
Director, and Professor of Law, Sociology, and Political Science at the University of Wisconsin, Madison