

Sunday, March 25, 2012

Mr. Alfred M. Pollard
General Counsel
Comments/RIN 2590-AA53
Federal Housing Finance Agency, Eighth Floor
400 7th St., N.W.
Washington, DC 20024

Subject: RIN 2590-AA53 - Please restore PACE programs -- Mortgage Assets Affected by PACE Programs (Document ID FHFA-2012-0003-0001); Comments on Advanced Notice of Proposed Rulemaking and EIS Scoping Comments

Dear Mr. Pollard:

Property Assessed Clean Energy (PACE) programs were developed in 2007 to enable local communities interested in increasing energy security and electric grid reliability, creating jobs and reducing emissions of greenhouse gases and other pollutants to provide an affordable mechanism for homeowners to make energy efficiency or renewable energy improvements. PACE programs are also an important and innovative tool to increase the adoption of residential clean energy technologies, save consumers money, and make the nation more energy independent. PACE is a means by which local governments can effect these important public purposes using longstanding, widely-adopted land-secured municipal finance structures, known around the country as "improvement districts", "special tax districts", "assessment districts" and the like (collectively "land-secured municipal finance districts"). I strongly disagree with the Federal Housing Finance Agency's 2010 decision that PACE programs create too much risk and that homes with PACE assessments should not be worthy of financing through Federal Housing Finance Agency (FHFA) loans.

The FHFA's assertion that PACE assessments create unreasonable risk doesn't stand up to scrutiny. In fact, clean energy investments can be among the most profitable that one can make to a home. By lowering its operating cost, efficiency improvements leave homeowners more cash to meet their mortgage obligations. The Lawrence Berkeley Laboratory found that the presence of a solar system on a home provides a significant premium at resale.

Investing in energy efficiency and renewable energy technologies in homes is the smartest way to reduce our country's dependence on fossil fuels, reduce pollution, improve public health and curb climate change. PACE enables local communities to finance energy efficiency and renewable energy improvements with little or no upfront cost, at competitive interest rates and over a time period that matches the period over which energy savings associated with such improvements are realized. With PACE, assessments are made against property that benefits from energy efficiency or renewable energy improvements financed by a local government, tying the repayment obligation with the beneficiary of the financing. These innovative PACE programs

address the barriers that often stop homeowners from making these improvements and keeps the investment with the home, allowing future owners to both take the responsibility for the investment and reap the benefits.

Because of its unique ability to spur homeowner investment in energy efficiency and clean, on-site renewable energy, PACE legislation was passed by 27 states in just two and a half years. It has strong bi-partisan support at the local, state and Federal levels. PACE programs have been received with such overwhelming public support because they address one of the most important problems facing America, and offer an ability to scale that is unmatched by other alternatives.

I believe that the FHFA's action to unilaterally halt local government PACE programs on July 6, 2010 was unwarranted. This rulemaking provides an opportunity to establish a fact-based record and correct misinformation and misunderstandings, to the benefit of all stakeholders: local governments, mortgage lenders, homeowners, and our nation. I appreciate the opportunity, and I strongly urge the FHFA to look for ways to accommodate these broadly beneficial programs. To this end, I 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 the FHFA

The FHFA has repeatedly referred to PACE assessments as “loans.” To the contrary, they are property 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. These assessments are secured by liens, just as with property tax liens, which have always been senior to privately-held liens such as the first mortgage. PACE is but an additional public purpose sought to be carried out by municipalities using an established finance structure well familiar to the real estate and mortgage industries.

2) PACE assessments present minimal risks to lenders, investors, homeowners and government-sponsored enterprises

The 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 than the FHFA has asserted. Local governments that established PACE programs prior to the July 6, 2010 action by the 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:

I strongly urge the FHFA to reconsider its blanket opposition to PACE programs and to revise the Statement and the Directive. I would like to see that the FHFA's proposed rule provide that Fannie Mae, Freddie Mac, and any other mortgage lenders regulated by the FHFA (Enterprises) 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 the Department of Energy's "Guidelines for Pilot PACE Financing Programs" (May 7, 2010) (DOE Guidelines) or HR 2599 (The PACE Assessment Protection Act) to protect the interests of local governments, homeowners, mortgage lenders and the Enterprises.

5) EIS Scoping Comments

The Proposed Action in the FHFA's Environmental Impact Statement (EIS) should be changed to provide that the Enterprises may purchase mortgages subject to a first-lien PACE obligation or that could become subject to first-lien PACE obligations so long as the applicable PACE program conforms to standards and guidelines such as those established in HR 2599 or the DOE Guidelines. If the FHFA does not alter the Proposed Action, one of the alternatives analyzed in the EIS should be revisions to the FHFA's July 6, 2010 Statement and February 28, 2010 Directive to provide that the Enterprises are permitted to purchase mortgages subject to a first-lien PACE obligation or that could become subject to first-lien PACE obligations so long as the applicable PACE program conforms to standards and guidelines such as those established in HR 2599 or the DOE Guidelines.

I strongly urge FHFA to drop its opposition to residential PACE programs. It appears to be understating its benefit while overstating its risk. Fannie Mae and Freddie Mac should establish fair underwriting standards that allow PACE programs to proceed and deliver the significant economic and environmental benefits waiting to be unlocked.

Thank you for your consideration of my comments. Please do NOT add my name to your mailing list. I will learn about future developments on this issue from other sources.

Sincerely,
Christopher Lish
Olema, CA