



Office of Environmental Quality

City Manager's Office
414 East 12th Street, Suite 2404
Kansas City, Missouri 64106

March 26, 2012

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

RE: RIN 2590-AA53

Dear Mr. Pollard:

On behalf of the Mayor and City Council of Kansas City, Missouri, I am providing comments in response to the Advance Notice of Proposed Rulemaking and Request for Comments published by the Federal Housing Finance Agency (FHFA) in the Federal Register on Thursday, January 26, 2012 concerning Property Assessed Clean Energy (PACE) programs.

PACE is a groundbreaking state and local government innovation with a clear public purpose: promote energy efficiency, reduce the need to construct new power plants and transmission systems, and protect the environment. PACE has enormous potential to save homeowners money, create local jobs, and dramatically reduce energy use. Because of its unique ability to spur homeowner investment in energy efficiency and on-site renewable energy, PACE legislation was passed by 28 states, including the State of Missouri, in less than three years. It has strong bipartisan 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.

PACE programs make it financially possible for homeowners to invest in measures that provide a payback during the time that they occupy their homes, rather than only at the time of sale. Energy efficiency and on-site renewable energy projects reduce homeowner utility costs, making it easier for them to make their mortgage payments.

On April 1, 2010 the Kansas City, Missouri Mayor and City Council unanimously adopted a resolution urging the Missouri General Assembly to enact legislation that would give municipalities the option to form clean energy development boards to create PACE programs in order to provide financing to property owners for energy efficiency and renewable energy projects with repayments to be made via annual special assessments levied under an assessment contract. Despite the fact that the Missouri General Assembly did enact legislation authorizing such PACE programs, FHFA's action to effectively halt local PACE programs on July 6, 2010 and again on February 28, 2011 virtually eliminated the ability of Kansas City and other Missouri municipalities to act upon the authority provided to them by the Missouri General Assembly and provide successful PACE programs.

We believe FHFA's action was unwarranted and this rulemaking provides an opportunity to establish a fact-based record and correct misinformation to the benefit of all stakeholders: local governments, mortgage lenders, homeowners, and our nation. We appreciate the opportunity and urge you to look for ways to accommodate these broadly beneficial programs. Toward this end, we request 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 the length of their repayment periods.

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

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 utility rate increases over time. These factors lessen, if not eliminate the safety and soundness risk that the FHFA has asserted. The White House (October 18, 2009) and the U.S. Department of Energy (May 7, 2010) 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 U.S. House of Representatives (HR 2599 – Hayworth, R-NY 19) further delineates national standards to minimize risk to lenders and consumers. 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 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, social, and environmental benefits:

PACE has great potential to help governments attain important economic, social 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 costs by more than \$125,000 in the first year. Energy efficiency improvements can also increase the comfort of people living in those homes and improve indoor air quality. These benefits are important to local governments and homeowners. 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 encourage 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).

On March 22, 2012 Mayor Sylvester James and the City Council unanimously adopted Resolution No. 120293, expressing their opposition to FHFA's actions that made it impossible to implement residential PACE programs and directing city staff to submit comments to you urging you to adopt an FHFA rule that will enable the creation and implementation of residential PACE programs across the country. A copy of that resolution has been submitted with our comment letter.

We appreciate the opportunity to submit these comments and recommendations regarding the FHFA's advanced notice of proposed rulemaking on behalf of the Mayor and City Council of Kansas City, Missouri. We urge the agency to take actions that allow local and state governments across the country the opportunity to provide PACE programs to assist homeowners in implementing projects to improve energy efficiency and generate clean energy from on-site renewable energy systems.

Sincerely,



Dennis Murphey
Chief Environmental Officer

RESOLUTION NO. 120293

Declaring the City Council's support in requesting the Federal Housing Finance Agency (FHFA) to withdraw its prior negative statements regarding residential Property Assessed Clean Energy (PACE) programs and encouraging FHFA to develop regulation and guidance designed to maximize the value of PACE programs.

WHEREAS, utility bills represent a major cost for home and business owners; and

WHEREAS, persistent unemployment, particularly in the construction industry, continues to burden our families and communities; and

WHEREAS, investing in cost-effective energy efficiency and renewable energy improvements to homes and businesses can cut utility bills, create thousands of local jobs, and reduce reliance on foreign energy sources; and

WHEREAS, the upfront costs and potentially long payback periods are obstacles faced by property owners who want to implement energy efficiency and/or renewable energy projects at their homes; and

WHEREAS, the City Council on June 11, 2009, approved and adopted the Kansas City, Missouri Energy Efficiency and Conservation Strategy through passage of Resolution No. 090461 which includes a goal to reduce electricity use by 2 billion kWh per year and natural gas use by 5 billion cubic feet/year by 2020 and directs the City Manager to implement the strategy in order to reduce total energy costs, reduce fossil fuel emissions, and make the City a more sustainable community; and

WHEREAS, Property Assessed Clean Energy (PACE) financing programs are an innovative, voluntary local government solution that requires no general taxes or public funding to help property owners finance energy efficiency and renewable energy improvements – such as energy efficient heating, ventilation and air conditioning, upgraded insulation, new windows, solar installations, and other energy improvements – to their homes and businesses; and

WHEREAS, the City Council, pursuant to Resolution No. 100284, expressed its support for enactment of PACE legislation by the Missouri General Assembly; and

WHEREAS, twenty-seven states, including the State of Missouri, and the District of Columbia have passed laws enabling local governments to develop PACE programs; and

WHEREAS, despite the great promise of PACE, the Federal Housing Finance Agency (FHFA) and the Office of the Comptroller of the Currency on July 6, 2010, issued unwarranted statements (the “Statement”) and directed the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), (together, the “Enterprises”), and the Federal Home Loan Banks (the “Banks”) to refrain from purchasing residential mortgages with PACE assessments; and

WHEREAS, on February 28, 2011, the FHFA issued a directive (the “Directive”) to the Enterprises and the Banks to continue to refrain from purchasing mortgage loans secured by properties with outstanding first-lien PACE obligations; and

WHEREAS, the Statement and the Directive have had an immediate chilling effect on certain existing PACE programs, halting operations and freezing the potential development of hundreds of other PACE programs nationwide including Kansas City, Missouri; and

WHEREAS, the National League of Cities, National Association of Counties and the US Conference of Mayors have commented on the FHFA Advance Notice of Proposed Rulemaking (ANPR) in support of PACE and its attendant benefits to the nation, to municipalities, to property owners and to lenders without federal tax subsidies, mandates, or expansion of any federal programs; and

WHEREAS, FHFA's withdrawal of its Statement and Directive and endorsement of regulation or guidance designed to maximize the value of PACE programs would allow municipalities to create successful PACE programs at the local level and give Kansas City the ability to determine whether it wishes to create a clean energy development board to provide financing to property owners for energy efficiency and renewable energy projects in Kansas City; NOW, THEREFORE,

BE IT RESOLVED BY THE COUNCIL OF KANSAS CITY:

That the City of Kansas City, Missouri opposes the Federal Housing Finance Agency's current position regarding residential PACE programs, urges the Federal Housing Finance Agency to rescind its Statement and Directive foreclosing the resource option for Kansas City residents for financing energy efficiency and renewable energy improvements through a PACE program, and requests that the City Manager submit comments to the Federal Housing Finance Agency pursuant to FHFA's ANPR and request for comments published in the Federal Register on January 26, 2012, taking into consideration the series of questions posed by the Federal Housing Finance Agency as well as any other issues and questions determined by staff to be relevant.

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KANSAS CITY COUNCIL RECORD

Thursday, March 22, 2012

Upon Roll Call the following members were present:**Presided:** 1 - SYLVESTER JAMES, JR.**Present:** 11 - SCOTT WAGNER, ED FORD, RUSS JOHNSON, MELBA CURLS, JERMAINE REED, JIM GLOVER, JAN MARCASON, CINDY CIRCO, MICHAEL BROOKS, SCOTT TAYLOR, JOHN SHARP**Excused:** 1 - DICK DAVIS**120274** RESOLUTION - Recognizing Alan A. Young, Sr., for his 14 years of dedicated service as the Ivanhoe Neighborhood Council President.

Adopted

Ayes: 12 - Wagner, Ford, Johnson, Curls, Reed, Glover, Marcason, Circo, Brooks, Taylor, Sharp, James, Jr.

Nays: 0

120275 RESOLUTION - Honoring Charles Myers, George Cook and Stephen Abend for their valued service to the City Plan Commission of Kansas City, Missouri.

Held on Docket (3/29/2012)

120259 COMMUNICATION - Notice to the Mayor and City Council regarding a response to Cost Statement As Requested in Committee Substitute for Ordinance No. 100607, As Amended (2-1201.4) and Pursuant to 105.675 RSMo.

Received And Filed

Ayes: 12 - Wagner, Ford, Johnson, Curls, Reed, Glover, Marcason, Circo, Brooks, Taylor, Sharp, James, Jr.

Nays: 0

120272 COMMUNICATION - EMERGENCY REGULATION E41355

Received And Filed

Ayes: 12 - Wagner, Ford, Johnson, Curls, Reed, Glover, Marcason, Circo, Brooks, Taylor, Sharp, James, Jr.

Nays: 0

120278 COMMUNICATION - EMERGENCY REGULATIONS E41356-E41359

Received And Filed

Ayes: 12 - Wagner, Ford, Johnson, Curls, Reed, Glover, Marcason, Circo, Brooks, Taylor, Sharp, James, Jr.

Nays: 0

120290 COMMUNICATION - Notice from the Ward Parkway Center Community Improvement District regarding submission of an amended budget for the 2012-13 fiscal year.

Received And Filed

Ayes: 12 - Wagner, Ford, Johnson, Curls, Reed, Glover, Marcason, Circo, Brooks, Taylor, Sharp, James, Jr.

Nays: 0

120220 RESOLUTION - Approving an amendment to the Main Street Corridor Land Use and Development Plan for an approximately two acre area located generally located on the east half of the block bounded by W. 39th Terrace on the north, W. 40th Street on the south, Broadway on the west and Central Street on the east from single family and commercial to medium density residential. (581-S-7)

Adopted

Ayes: 11 - Wagner, Ford, Johnson, Curls, Reed, Glover, Marcason, Circo, Taylor, Sharp, James, Jr.

Nays: 0

120222 RESOLUTION - Amending the Westport Land Use Plan by amending the Proposed Land Use Plan and Map for approximately about 2 acres generally located on the east half of the block bounded by W. 39th Terrace on the north, W 40th Street on the south, Broadway on the west and Central Street on the east from one/two family residential to multifamily residential high density. (132-S-38)

Adopted

Ayes: 11 - Wagner, Ford, Johnson, Curls, Reed, Glover, Marcason, Circo, Taylor, Sharp, James, Jr.

Nays: 0

120293 RESOLUTION - Declaring the City Council's support in requesting the Federal Housing Finance Agency (FHFA) to withdraw its prior negative statements regarding residential Property Assessed Clean Energy (PACE) programs and encouraging FHFA to develop regulation and guidance designed to maximize the value of PACE programs.

Adopted

Ayes: 11 - Wagner, Ford, Johnson, Curls, Reed, Glover, Marcason, Circo, Taylor, Sharp, James, Jr.

Nays: 0

120239
(Sub.) Reestimating uncollected revenue and reappropriating unencumbered unexpended funds in the 2010 Supportive Housing Program Grant account.

Passed as Substituted

Ayes: 11 - Wagner, Ford, Johnson, Curls, Reed, Glover, Marcason, Circo, Taylor, Sharp, James, Jr.