



VIA ELECTRONIC SUBMISSION

March 26, 2012

Mr. Alfred M. Pollard
General Counsel
Attention: Comments/RIN 2590-AA53
Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW
Washington, DC 20552

Re: (RIN) 2590-AA53 -- Mortgage Assets Affected by Property Assessed Clean Energy ("PACE") Programs

Dear Mr. Pollard,

On behalf of the Federal Home Loan Bank of New York ("FHLBNY"), I appreciate this opportunity to comment on the above-referenced advance notice of proposed rulemaking ("ANPR") issued by the Federal Housing Finance Agency ("FHFA") relating to the statement issued by the FHFA on July 6, 2010 (the "Statement"), and the letter directive issued by the FHFA on February 28, 2011 (the "Directive"), that deal with PACE programs.

FHLBNY supports the FHFA's approach outlined in the Statement and the Directive and agrees with the guidance set forth therein as the most prudent course of action.

I. Background

A. PACE Programs

In late 2009, the Department of Energy created the PACE programs, which allows state and other local governments to use "land-secured financing" to fund retrofitting of residential and commercial properties with energy efficient or environmentally friendly improvements. Generally, local governments issue bonds to raise funds for such improvements and these bonds are then repaid by homeowners and secured by property tax assessments on the real properties. Currently, more than 25 states administer some form of PACE program. Under most of these programs, PACE loans acquire priority over mortgages, including pre-existing first mortgages.

B. Federal Home Loan Banks

The Federal Home Loan Banks (“FHLBs”) are government-sponsored enterprises of the United States, organized under the authority of the Federal Home Loan Bank Act of 1932, as amended, and structured as cooperatives. There are 12 independently chartered and managed FHLBs that serve the economy and general public interest by providing liquidity to approximately 8,000 member institutions, thereby increasing the availability of credit for residential mortgages, community investments, and other services for housing and community development. Specifically, the FHLBs provide their members with a readily available, low-cost, source of funds through secured loans called “advances.” In addition to advances, the FHLBNY also serves the public interest and its membership through programs such as the Mortgage Partnership Finance program (“MPF”), which seeks to empower families through homeownership by providing community banks, thrift institutions and other mortgage lenders across the country with an efficient method for financing mortgages. We also manage our earnings and liquidity by investing in products such as Mortgage Backed Securities (“MBS”).

All of the FHLBs’ services and investments are subject to vigorous regulatory requirements and operate under the oversight of the FHFA as their dedicated primary regulator. Per regulation, and as a matter of prudent business practice, all FHLB credit products are secured by a first priority security interest in all of our members’ collateral and members are required to represent and warrant that none of their pledged collateral is encumbered by a prior lien. This lien priority is the foundation on which the FHLBs’ business rests. This lien priority’s indispensability to FHLB management was highlighted by Congress when it granted priority to all security interests held by the FHLBs in the Competitive Equality Banking Act of 1987 (“CEBA”). Under the provisions of CEBA, FHLBs’ security interests have priority over the claims of any party, including any receiver, conservator, trustee, or similar party having rights as a lien creditor, except for claims held by bona fide purchasers for value or by parties that are secured by prior perfected security interests, provided that such claims would otherwise be entitled to priority under applicable law.

As of December 31, 2011, FHLBNY has \$67 billion in outstanding advances and \$1.4 billion in MPF loans. Within the FHLBNY’s district, the state of New York has PACE program legislation. However, FHLBNY is exposed to PACE programs across the nation through the mortgage loan collateral pledged by members for advances and in the MPF mortgage purchase program.

II. FHFA’s Guidance Regarding PACE Loans Is Correct and Prudent

A. In Their Current Form, PACE Programs Create a Significant Risk in the Mortgage Lending Market

As mentioned above, only one state in FHLBNY’s district, the State of New York, has PACE program legislation for first mortgage home loans. However, the mortgage loans in FHLBNY’s MPF program and the mortgage loan collateral pledged for advances are spread throughout the nation and the FHLBNY is concerned about the legal structure often found in these programs;

the absence of appropriate underwriting standards in extending such loans, and the lack of appropriate standardization in the financed improvements.

As a secured creditor, FHLBNY is deeply troubled by the disruption in well-established mortgage lending priority rules that is caused by the super priority status granted to PACE loans springing into existence long after the first mortgage has been granted. While PACE energy loans and other property rehabilitation loans may have merit to assist the property, as a public policy matter, the structure of the programs are contrary to traditional first mortgage lending. The automatic priority lien status typically granted to PACE lending undermines not only the FHLBNY member-lenders' lien priority but also therefore, the FHLBNY's pre-established lien priority which presents a key disruption to well-established first mortgage home lending. Despite assertions to the contrary, PACE loans are not like routine tax assessments. PACE loans' size and duration exceed typical local tax programs, and they do not provide the traditional community benefits associated with tax assessments. As such, they pose unique and difficult risk management obstacles for liquidity lenders such as the FHLBNY. The "after-the-fact" lien priority disruption by PACE loans would have an adverse effect on FHLBNY's valuation of collateral located in PACE jurisdictions, potentially forcing adoption of more restrictive loan-to-value ratios, higher overcollateralization requirements, and higher collateral discounts. Due to the springing nature of PACE loan liens and the lack of required formal disclosure by states and municipalities to mortgage lenders with prior liens that a PACE loan lien was placed on a property, there is no way to determine what properties in a PACE jurisdiction will be encumbered, thus forcing potential for adjustments to all collateral in a PACE jurisdiction. These more stringent standards are likely to result in an overall increase in the cost of home mortgage finance. Because of these issues, the FHLBNY does not accept mortgage loan collateral where a PACE lien is present.

These problems are further compounded by the lack of consistency in sound underwriting guidelines and consumer protections for PACE loans. Currently, PACE loans are extended on the basis of a home owner's property and are not underwritten based on a borrower's ability to repay. In addition, there does not appear to be any consistency in the states' and municipalities' standards for determining appropriate improvements, assessing the post improvement value of the affected property, or the average costs for improvements.

Given the absence of appropriate underwriting standards, lack of energy retrofit standards to assist homeowners, inspectors and lenders determine the value of improvements, and the absence of protections like Truth-in-Lending Act protections and other consumer protections, it is inappropriate to accept such springing first liens that disrupt a still fragile housing finance market and centuries of established mortgage lending practices.

B. FHFA Has the Authority to Address Safety Soundness Concerns related to the FHLBanks and Regulated Entities

Our experience as a collateralized lender to our member financial institutions confirms and supports the FHFA's view, as articulated in Statement and the Directive, that PACE programs present significant safety and soundness concerns, particularly in jurisdictions that have established first priority positions for such loans. As the dedicated primary regulator of the FHLBs, the FHFA has the authority to address such concerns. Per Section 8 of the Bank Act (12

U.S.C. § 1428), if the FHFA determines “that under the laws of any such State or the regulations or procedure thereunder there would be inadequate protection to a Federal Home Loan Bank in making or collecting advances...the Director may withhold or limit the operation of any Federal Home Loan Bank in such State until satisfactory conditions of law, regulation, or procedure shall be established.” In addition, the Director is authorized “to exercise such incidental powers as may be necessary or appropriate to fulfill the duties and responsibilities of the Director in the supervision and regulation” of the FHLBs.

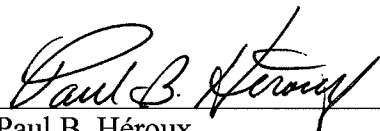
Therefore, the FHFA has the legal authority to limit or proscribe the FHLBs’ exposure to PACE programs that undermine long established mortgage lending priority principles by implementing certain conditions and restrictions related to properties in jurisdictions that participate in PACE programs. Such actions are necessary to ensure that the FHLBs are not subordinated under otherwise well-settled federal and state Uniform Commercial Code secured lending practices. In establishing such conditions and restrictions, we urge the FHFA and state and local policymakers to avoid unintended consequences to the FHLBs and their member institutions, such as decreased borrowing capacity resulting from the associated changes to the members’ collateral valuation, especially since many institutions rely on the FHLBs to meet their liquidity needs.

III. We Support Prudent Environmental Initiatives

We would like to clearly articulate that we fully support environmental initiatives and care about ensuring sound planning approaches that will support sustainable economic growth. However, we strongly believe that in order to have meaningful breadth and impact, such programs must be designed and implemented in a prudent and equitable manner that comports with established law and business practice and does not disrupt existing markets. We believe that PACE programs where the PACE loan takes its appropriate place in the priority line, in accordance with centuries of established law, and where appropriate standards for underwriting and proper consumer protections have been followed, are not only good for the environment, but are also the smart economic approach for the future.

We thank you for this opportunity and for your consideration of our comments on this ANPR. If you have any questions or need clarification with respect to these comments, please contact the undersigned.

Sincerely,



Paul B. Héroux

Federal Home Loan Bank of New York
Senior Vice President – Head of Member Services Group