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MICHAEL DELANEY
Director, Energy Regulatory Affairs

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March 26, 2012

Mr. Alfred Pollard
General Counsel
Federal Housing Finance Agency
400 Seventh Street, N.W.
Washington, DC 20024

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

Dear Mr. Pollard:

The City of New York ("City") welcomes the opportunity to provide its perspective to the Federal Housing Finance Agency ("FHFA") concerning the value of Property Assessed Clean Energy ("PACE") programs as a means of advancing critical public policies in the City, and indeed, across the nation. PACE is a key state and local governmental innovation that was developed to advance several goals: achieving heightened energy efficiency and material cost savings for energy consumers, improving air quality, and potentially at least, avoiding or deferring the construction of costly energy infrastructure elements, such as utility substations and distribution networks.

Nature and Value of PACE Assessments

PACE offers enormous potential to save homeowners money, create local jobs and dramatically reduce energy use. Energy efficiency investments will clearly be accelerated by the broader use of PACE programs. Because of their unique ability to spur investment in energy efficiency and clean, on-site renewable energy, PACE programs have been created over the last few years by some twenty-seven (27) states. The PACE concept has received bipartisan endorsements at the local, state and federal levels, and PACE programs have also enjoyed strong public support because they offer a key means of bridging serious funding gaps that have slowed the development of capital-intensive residential energy efficiency and renewable power installations.

Important to the FHFA administrative review process in this matter is the fact that there are few if any feasible alternatives to PACE. Such potentially competing programs as utility company on-bill financing measures have proven to be problematic due to the high rate of turnover typically seen in residential customer accounts. Only PACE offers a feasible option that will, like other forms of liens on real property, effectively ensure a stream of payments for long-life energy assets even if there are changes in property ownership. In this sense, PACE programs are unmatched by other purportedly comparable means to foster energy investments that require significant upfront financing. And given the prevalence of residential mortgage ownership and guarantees provided by FHFA-regulated Government Sponsored Enterprises ("GSEs"), the untoward effects of an unduly restrictive policy by FHFA can be directly inimical to the dissemination and ultimate success of PACE programs.

This rulemaking proceeding provides an opportunity to establish a full factual record and correct misimpressions, to the benefit of all stakeholders: local governments, mortgage lenders, and homeowners. The City urges the FHFA to seek ways to accommodate PACE programs – an accommodation that can clearly be reached in a manner that is consistent with the legitimate needs of mortgage lenders. There is no necessary conflict between lenders and proponents of PACE programs. In fact, the real property enhancements facilitated by such programs across the country will almost invariably increase the value of the underlying assets upon which lenders rely as collateral in making residential mortgage loans. Particularly given their relatively small size and their inherent cash flow positive design, the priority lien status of PACE assessments should pose no risk to mortgage holders. Accordingly, the City recommends that the FHFA adopt reasonable underwriting standards that will permit the success of broadly beneficial local PACE programs. As noted, this can be done in a manner that will maximize benefit and minimize risk, as further described below.

While FHFA has characterized PACE assessments as loans, they are more properly viewed as property tax assessments with characteristics similar to those of many other realty-secured special assessment districts in the United States. Such districts allow local governments to finance public improvements such as sewer and water systems, parks, open space acquisitions, and business improvements. Other districts allow property owners to act voluntarily and individually to adopt municipally financed improvements to their property that are repaid with assessments. In effect, PACE districts are not dissimilar to many other special assessment districts, both in the size of assessments and in length of typical repayment periods.

FHFA has in the past asserted that PACE presents "significant safety and soundness" concerns, but no meaningful evidence has been adduced in the record to support such a claim. FHFA also took the position that PACE liens should not enjoy priority status on the purported grounds that they lack the "traditional community benefits associated with taxing initiatives."

This view reflects an unduly narrow perspective on community benefits on the part of the agency. As an initial matter, by modernizing energy infrastructure elements, PACE property improvements will advance public policy goals related to air quality, climate change adaptation, and quality of life for homeowners. Moreover, there is ample experience, now borne out by a number of studies, that energy efficiency and renewable energy improvements reduce homeowners' energy bills and increase their property values, ultimately strengthening their financial position. In addition, the design of PACE programs involves a model in which the amortized monthly cost of energy-related retrofits is lower than the monthly energy savings realized by the homeowner by reason of the installed energy measures. This fact illustrates why the default rates seen in PACE programs to date have been vanishingly small. The value of PACE-financed energy installations (less than $9000 on average, or some 10% of the value of a typical underlying property) relative to residential mortgage debt levels also illustrates the very small risk posed by PACE programs to the senior lien status enjoyed by GSEs and other mortgage lenders. As was noted in the comments of others received in this proceeding, the American Council for an Energy-Efficient Economy conducted a study that demonstrates that default rates by PACE program participants are "extremely low."

PACE-financed improvements allow homeowners to hedge themselves against fuel price spikes and rising energy costs over time. These factors help to lessen, if not eliminate, the safety and soundness risk that the FHFA has asserted exists in the PACE system. Local governments that established PACE programs prior to the July 6, 2010 directive by FHFA developed extensive program standards specifically to protect both housing lenders and consumers.

Federal authorities have been equally forthright in recognizing the value of PACE programs in advancing important public policy goals: the White House on October 18, 2009 issued a "Policy Framework for PACE Financing Programs" that supported the use of federal funds for pilot programs, and the Department of Energy ("DOE") on May 7, 2010 published national PACE guidelines with explicit underwriting standards to ensure that homeowners would be able to afford the major energy-related installations. DOE also employed American Recovery and Reinvestment Act funding to support Energy Efficiency and Conservation Block Grants that were

expressly authorized for use in PACE programs, and promulgated standards that set forth best practices to employ in such programs for the protection of homeowners and lenders alike.

State and local governments have enacted PACE laws because the program has genuine potential to help such entities realize important economic and environmental goals that cannot readily be met by other means. 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 expenses by more than $125,000 in the first year alone. These benefits are important by themselves.

Administrative Procedure Act Compliance Obligations

In developing a rule that properly serves the public interest, the FHFA must weigh perceived risks against the demonstrable economic benefits that will clearly reduce loan default rates. More generally, under the terms of the Administrative Procedure Act ("APA") that governs federal agency actions, decisions must be made on the basis of evidence that demonstrates a rational connection between the facts found and the agency choices made. Importantly, an agency cannot rely on unsupported or conclusory assertions, but rather must engage in reasoned fact-finding. Particularly where there is evidence of a number of well-functioning local initiatives that provide empirical evidence of the value and soundness of PACE programs, FHFA is not at liberty to ignore the lessons such programs teach in favor of unsupported claims of undue risk.

Another practice condemned by the extensive federal decisional law that has developed around the APA is the agency use of unwarranted or overbroad measures to address perceived problems. Thus, even if FHFA were justified in concluding that PACE programs pose an undue risk to GSEs or others – a conclusion the City does not accept – it would still be incumbent on the agency to examine the effectiveness of alternative measures short of an outright prohibition on the GSE purchase of mortgages for PACE-affected properties.

Conclusion

The City strongly urges the FHFA to reassess its opposition to PACE programs. We recommend that the Agency adopt a rule providing that the GSEs and any other mortgage lenders regulated by FHFA be permitted to buy residential mortgages with PACE assessments that are originated by programs that conform to rigorous standards and guidelines such as those established in the pending bill, H.R. 2599 (The PACE Assessment Protection Act), in order to protect the legitimate interests of local governments, homeowners, mortgage lenders and GSEs.

We appreciate your consideration of the views of the City of New York in this matter.

Very truly yours,

/s/Michael J. Delaney

Michael J. Delaney

Director – Energy Regulatory Affairs