

March 26, 2012

Alfred M. Pollard, General Counsel
Federal Housing Finance Agency
Eighth Floor, 400 Seventh Street SW
Washington, DC 20024

RE: RIN 2590-AA53, Advance notice of proposed rulemaking; request for comments; Notice of intent to prepare environmental impact statement; request for scoping comments

Dear Mr. Pollard:

Representing the nation's leading firms participating in the multifamily rental housing industry, the National Multi Housing Council and the National Apartment Association appreciate the opportunity to respond to the Federal Housing Finance Agency's (FHFA) request for comments regarding "Mortgage Assets Affected by PACE Programs." Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management, and finance. The National Multi Housing Council represents the principal officers of the apartment industry's largest and most prominent firms. The National Apartment Association is a federation of 170 state and local affiliates comprised of more than 55,000 multifamily housing companies representing more than 6.2 million apartment homes. NMHC and NAA jointly operate a federal legislative program and provide a unified voice for the private apartment industry.

Apartment properties with 5 or more units are home to more than 17 million households - over 14 percent of the nation's households; these properties are valued at \$2 trillion.¹ According to research from Harvard's Joint Center for Housing Studies, the United States is on the cusp of fundamental change in housing dynamics as shifting demographics and housing preferences are leading more people to choose apartment homes.² Apartments will become an increasing portion of the nation's housing mix in the next decade.

The ongoing financial turmoil in the real estate industry underscores the need to have sound underwriting fundamentals including property valuation. NMHC/NAA share the concerns of the FHFA articulated in its July 2010 Statement on PACE financing.³ First lien matters are fundamental and must be addressed if Property Assessed Clean Energy (PACE) programs are to move forward. As our industry relies on non-recourse loans subject to property cash-flow, protecting the lien holder interest is critical to maintaining cost effective liquidity in the market. Any cloud on the lien through debt or local tax provisions that jeopardize the first lien could have material implications on a broad basis. There are significant variations among the programs in regard to efficiency metrics, loan to value determinations, fees and payback time among the PACE programs that have been advanced by 27 states. The popularity of these voluntary programs suggests that they are addressing a financing need that is unmet in the market.

¹ <http://www.nmhc.org/Content/ServeContent.cfm?ContentItemID=150>

² http://www.jchs.harvard.edu/publications/markets/son2006/son2006_rental_housing.pdf, p. 24

³ <http://www.fhfa.gov/webfiles/15884/PACESTMT7610.pdf>

NMHC/NAA support the public policy goals of environmental security and energy independence pursued through programs that assist property owners in upgrading their buildings to perform more efficiently. The Administration has urged building owners to invest in improving the energy performance of their properties and, to that end, established the Better Buildings Initiative. While participation in this effort is voluntary, other federal, state and local programs are creating increasing levels of responsibility for property owners to measure and disclose their buildings' energy performance. The U.S. Department of Energy (DOE), for example, is piloting asset rating programs for both residential and commercial properties that are aimed at developing a numeric rating system for building design and performance. As well, several cities now require that property owners submit utility consumption data for their properties as a basis for establishing a rating program that would provide information to consumers regarding individual properties.

When energy performance programs shift from voluntary participation to a mandate it is anticipated that owners of older, existing properties will need to make significant capital investments in building systems in order to be considered favorably alongside buildings with newer systems and technological features. Indeed, DOE has endorsed commercial PACE financing programs whereby local governments create funds to be loaned to multifamily, commercial and industrial property owners to finance energy efficiency and renewable energy improvements that are paid back through property tax bills. In regard to apartment buildings DOE notes "tenants are increasingly aware of energy efficiency and may drive owners towards PACE-financed improvement."⁴

The current financial climate, while improving, still presents challenges for property owners who seek to layer additional debt on their properties. The combined forces of faltering job creation, loss of equity value across the real estate industry and the weak fundamentals in the commercial mortgage-backed securities market present real obstacles to re-financing efforts. If renovations on private property are seen as a public service that benefits society overall by reducing energy and water consumption, reducing pressures on infrastructure, lessening greenhouse gas emissions and contributing to national security, it will be necessary to develop additional financing tools to assist property owners in shouldering this responsibility.

The American Recovery and Reinvestment Act sought to create jobs in the hard-hit construction sector as well as advance energy savings by providing resources to assist certain property owners in retrofitting their properties. Financing tools including the Federal Energy Tax Deduction (Section 179D) which provides a tax incentive for certain commercial building retrofits that meet specific performance standards are inadequate and difficult for certain property owners to utilize. Programs that provide favorable tax treatment for the installation of certain renewable energy technologies (Section 1603) have expired and efforts to restore them have thus far failed. All of these programs have had limited utility for the apartment industry for various reasons; whether the PACE tool will be available for multifamily properties in any meaningful way remains to be seen. In theory, however, it will expand the range of financing options available to property owners.

Commercial financing arrangements often require that lenders approve decisions that affect property valuation. NMHC/NAA believe that it is important that participation in PACE assessment programs remain voluntary and that the process remain transparent. Borrowers should be informed of the true costs of the funds, the criteria for property improvements should be established to reasonably insure that the improvements deliver the energy savings and the enhanced property valuation that is promised. In regard to the concept of commercial PACE assessment districts, we believe that property owners should be able to voluntarily opt into a program that finances energy improvements on their property. We are concerned about implications from a special tax assessment which could be levied

⁴ [http://www1.eere.energy.gov/wip/solutioncenter/pdfs/commercial%20pace%20primer%20\(jul%2012\).pdf](http://www1.eere.energy.gov/wip/solutioncenter/pdfs/commercial%20pace%20primer%20(jul%2012).pdf)

against properties that are located in a PACE district to finance improvements on other properties not under the direct ownership of the tax payer.

Summary: Access to a full range of financing options is essential to assist property owners in making significant investments in upgrading building systems and adopting new technologies to meet public policy goals. PACE financing is a tool that holds promise but has many unresolved concerns. If FHFA advances policies in this area then consideration should be given to establishing minimum protocols for various property types. Multifamily housing is inherently different in its structure, building systems and has distinct financing needs in comparison with other types of residential properties.

We appreciate the opportunity to comment on this issue, and look forward to working with you in your efforts to improve energy efficiency and conservation in multifamily housing. Any questions on our comments can be directed to Eileen Lee, NMHC Vice President of Energy and Environmental Policy, at 202/974-2326 or elee@nmhc.org.

Sincerely,



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National Multi Housing Council



Gregory Brown
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