

September 13, 2012

Mr. Alfred Pollard, General Counsel  
Attn: Comments/RIN 2590-AA53  
Federal Housing Finance Agency, Eighth Floor  
400 Seventh Street, SW.  
Washington, DC 20024



Dear Mr. Pollard:

We write to express our objection to the premise of the Notice of Proposed Rule (NPR) that Property Assessed Clean Energy (PACE) programs materially increase financial risks to Fannie Mae and Freddie Mac (the Enterprises), and to the Proposed Rule, which continues to block PACE for residential properties.

Our Communities here in New York State have decided to provide scaled and persistent energy reduction services to our residents in order to remain viable and resilient in the challenges presented by the global economy. Elevated energy prices continue to put pressure on the ability for our communities to thrive. Elevated levels of pollution from energy use in our buildings put pressure on the livability of our communities and their environmental vitality we rely on. Energy dollars currently wasted through inefficient building systems would be better used in local activities that create jobs and local tax revenue.

The fourteen municipalities and dozens of communities that participate in the Energize NY program and that promote NYSERDA's time tested Home Performance with Energy Star upgrade program find that energy wasted through sub standard insulation, inadequate air sealing and inefficient mechanical systems are easily remedied reducing energy waste by up to 40%. In addition, significant community benefits accrue to the community and our state through these programs with increased job growth, lower particulate and GHG emissions and reduced export of energy \$\$\$. In order to scale these community and statewide benefits, a convenient and accessible form of financing is necessary.

New York State law provides that the municipalities of NYS have the right to provide PACE financing in order that the state may reach it's goals to reduce GHG Emissions, reduce imports of energy and create much needed clean energy jobs to counter the effect of the weak local, global and housing economies. Our program, along side NYSERDA's efficiency programs, have proven that energy upgrades increase the value of homes, reduce homeowners' energy costs (thereby making mortgage repayment more likely), grow jobs and economic activity, and help local governments meet greenhouse gas reduction and clean energy goals. FHFA must not ignore the substantial weight of the evidence in the record establishing that energy upgrades and, in particular,

upgrades financed by PACE programs, do not pose material risks to the Enterprises while providing dramatic community benefits.

FHFA's Proposed Rule is even more draconian and harmful to local government PACE programs than the proposed action cited in the FHFA's Advance Notice of Proposed Rulemaking. In addition to prohibiting the Enterprises from buying mortgages on properties with PACE liens, it allows the Enterprises to make mortgages on such properties immediately due, and would prohibit the Enterprises from consenting to PACE obligations under any conditions.

FHFA's Proposed Rule challenges the well-established authority of New York State local governments to finance improvements with a valid public purpose through assessments, and imperils an extremely effective means of creating jobs, ensuring energy security and protecting public health and the environment. One could assume that the Proposed Rules could extend to other public purpose activities like Sidewalk Improvements, Water Projects and Sewer services. The FHFA's stance and the position of FannieMae and FreddieMac have not gone unnoticed in our communities. We resent this meddling and note the precedent that is being set impeding the ability for local governments and their supporters to effect positive change and provide legal public purpose benefits.

As a solution, we offer that FHFA should adopt a modified version of its Alternative 3 to the Proposed Rule (H.R. 2599 Underwriting Standards). Alternative 3 provides rigorous underwriting criteria and other protections to reduce the risk of default, ensure that PACE-financed improvements add to the value of homes and sufficiently protect the Enterprises from risk perceived by FHFA. As drafted in the NPR, Alternative 3 is not fully workable, because it still requires Enterprise consent to local government assessments for valid public purposes, and does not ensure that the Enterprises will indeed consent even if local governments comply with these rigorous underwriting standards. FHFA should therefore adopt a modified version of Alternative 3 as follows:

So long as all PACE liens are recorded and the Alternative 3 underwriting standards are satisfied, then the Enterprises shall:

1. not take actions to make immediately due the full amount of any obligation secured by a mortgage that becomes subject to a first-lien PACE obligation;
2. be permitted to purchase mortgages subject to first-lien PACE obligations; and
3. if requested, consent to the imposition of a first-lien PACE obligation.

This variation on Alternative 3 provides a solution that is supported by the evidence, can be implemented by local governments and will allow PACE programs to move forward.

We welcome the opportunity to work with FHFA to further refine this modified alternative to the Proposed Rule if necessary. FHFA should not close the door to residential PACE when a workable solution is either available now or can be resolved in a collaborative stakeholder process in a relatively short period of time.

In sum, FHFA should adopt Alternative 3 to the Proposed Rule (modified as proposed in these comments). This solution enables FHFA to enhance the value of the Enterprises' portfolio while respecting the rights of our local governments to protect the public health and safety and allowing this extremely effective engine of job creation to move forward.

Sincerely,

Mark F. Thielking  
Town of Bedford, NY  
Director of Energy Resources,  
Chairman, Energy Improvement Corporation  
(914) 960 9838  
[bedfordnyenergy@gmail.com](mailto:bedfordnyenergy@gmail.com)  
[www.energyimprovementcorp.org](http://www.energyimprovementcorp.org)