



Mr. Alfred M. Pollard
Attn: Comments/RIN 2590-AA53
Federal Housing Finance Agency
Eighth Floor
400 Seventh Street, SW
Washington, DC 20024
Submitted via electronic mail
regcomments@fhfa.gov

Comments from the Business Council for Sustainable Energy
Re: Notice of Proposed Rulemaking, RIN 2590-AA53

Submitted September 13, 2012

Dear Mr. Pollard,

Thank you for providing this opportunity to comment on the proposed rule and risk-mitigation alternatives. As stated in our April 2012 comments on the Advanced Notice of Proposed Rulemaking, the Business Council for Sustainable Energy (BCSE) believes that PACE financing programs can be implemented responsibly and that safeguards exist in many PACE programs to mitigate risks.

PACE financing programs offer an effective means for localities to leverage their legal power to levy property assessments to help property owners improve their properties' energy efficiency and install renewable energy equipment. The voluntary nature of PACE and the range of improvements that are eligible for PACE financing mean that it presents less risk to both lenders and the GSEs than more traditional municipal assessments which may put a lien on the property without contributing to its value.

The BCSE looks forward to working with the Federal Housing Finance Agency and others to further integrate energy efficiency and green financing into the Agency's portfolio, particularly subsequent to the August 9, 2012, ruling by the United States District Court for the Northern District of California.

About the Business Council for Sustainable Energy

The Business Council for Sustainable Energy is a coalition of companies and trade associations from the energy efficiency, natural gas and renewable energy sectors, and also includes independent electric power producers, investor-owned utilities, public power, commercial end-users and project developers and service providers for environmental markets. For more information, please visit www.bcse.org.

Please note that as the BCSE is a diverse coalition, not all members endorse or take positions on the issues included in these comments. The comments contained in this filing represent the position of BCSE as an organization, but not necessarily the view of any particular member with respect to any specific issue.

Comments Regarding Section IV: "FHFA's Response to Issues Raised in the Comments"

Substantial evidence from a range of comments to the Advanced Notice of Proposed Rulemaking, key elements of which are cited in the Notice of Proposed Rulemaking, demonstrates that PACE assessments can reduce the risk to mortgage lenders and the GSEs and that standards as they currently exist have produced a reduced risk as demonstrated in low default rates. Far from presenting

“significant safety and soundness concerns” to lenders and the GSEs, any risk that does exist is comparatively tiny and in aggregate is expected to be more than offset by increased property values and borrowers’ improved ability to make payments on existing mortgages. Taken holistically, PACE financing produces a net reduction in risk to lenders and the GSEs.

Comments on Risk-Mitigation Alternatives

The First Risk-Mitigation Alternative focuses mainly on the use of insurance and insurers to cover any risk that might otherwise have been faced by mortgage lenders and the GSEs. In offering this alternative, the FHFA recognizes that insurance could have a role to play in eliminating the trivial risk PACE-assessed properties may present.

If pursued, such an alternative should consider more broadly where insurance might have a role to play. For instance, much of the FHFA’s doubts regarding PACE seem to stem from the uncertainty of energy savings that may result from PACE-financed projects. In commercial buildings it is optimal to seek a contractor who can guarantee savings, but in the residential sector that may not be practical except for large multi-residential units. Insurance, therefore, may be a means of achieving much of what the FHFA seeks in terms of risk mitigation, albeit through a slightly different mechanism than is proposed in the First Risk-Mitigation Alternative. However, no insurance product presently exists in the marketplace that protects against “100% of any net loss.”

Furthermore, while the BCSE believes adequately addressing elements of uncertainty is a cornerstone of any responsible PACE program, the BCSE remains concerned that insurance or reserve requirements such as are suggested in this alternative would add impractical costs to PACE programs and act as a de facto barrier to residential PACE.

Alternatively, the FHFA could adopt a hybrid approach whereby it directed the GSEs to require either that a property interested in acquiring PACE financing obtain some level of insurance (as discussed in the First Risk-Mitigation Alternative) or it meet a sort of ‘stricter than usual’ underwriting criteria as offered in the Third Risk-Mitigation Alternative (presumably with some detail filled in by regulation in line with the spirit of H.R. 2599). This would give property owners two paths to PACE eligibility based on their particular circumstances.

Still, the BCSE maintains that any restrictions must not create undue barriers to homeowners who do not present undue financial risk to the programs: once again, overly onerous eligibility requirements would act as a de facto barrier to the availability of PACE financing. The FHFA itself has expressed concern about the administrative costs of PACE programs and the BCSE believes that adding too many more would be counterproductive.

In conclusion, the BCSE believes that the Third Risk-Mitigation Alternative proposed by the FHFA and based on H.R. 2599 would add safeguards to state enabling legislation and local PACE program regulations and is a workable approach. While some in the PACE community have concerns about certain provisions in H.R. 2599, the BCSE believes the safeguards in the Third Risk-Mitigation Alternative are a workable approach to allaying the concerns of the GSEs and FHFA.

Contact Information

The Business Council for Sustainable Energy thanks the FHFA for the opportunity to comment on this important issue and looks forward to its resolution. If any clarification or further information is required, please contact Colbie Holderness (cholderness@bcse.org, 202-785-0507).

Sincerely,



Lisa Jacobson, President
Business Council for Sustainable Energy