

Fir Tree Partners

Date: June 23, 2010
From: Jeffrey Tannenbaum
To: Alfred Pollard
Re: Final Steps for PACE DOE Programs

Dear Alfred,

Thank you for the time yesterday. As promised, outlined below are the steps that we discussed your taking the lead on over the next several days in order to resolve the current “on hold” status of our nation’s PACE programs. After our meeting, I discussed the below steps with a number of senior administration officials and am confident that once you provide the below items they meet immediately to work toward a final resolution. I also made it clear to them that to the extent the FHFA gives clearance for PACE for the 24 month trial period, whether PACE will be permitted to continue and potentially expand after the trial period will be a function of how material or immaterial the risk associated with the senior lien proves to be as well as the efficacy of the energy retrofits.

I will call you shortly to walk through the below items. In the interim, if there is anything more I can do in the near term to facilitate the existing and DOE programs moving forward, please do not hesitate to call. I hope we can look back in two years and clearly see that FHFA and the administration helped start a responsible program for all stakeholders and our nation.

Sincerely,

Jeffrey Tannenbaum

FHFA Critical Path Items

1. **Senior Lien:** FHFA will work to determine if the trial period design can be improved as per below (“Trial Period Design Improvements”) so that potential risk associated with the senior lien during the trial is tolerable from its perspective.
2. **Final Trial Period Design Improvements from FHFA:** These are the FHFA improvements we discussed that are meant to reduce/bound the potential senior lien risk during the trial period while also ensuring that meaningful data is gathered so that the programs can move forward during the trial period. This is my best recollection of the items that FHFA needs to provide over the next several days.
 - I. **Final list of underwriting criteria** - FHFA to provide the final additions for underwriting criteria. It appeared during our discussions that the addition would be centered around the “borrower ability to pay.”
 - II. **Definition of scope/Number of New PACE Homes** - FHFA to provide the scope/Number of new PACE homes permitted during the Trial Period. One of the concerns you have raised during our conversations relates to the scope of the trial period given that PACE has been approved in much of California. We discussed the concept of “maximum penetration rates” as a means to bound the number of PACE

homes during the trial period. In the earlier note to you, I mentioned that a 3% penetration rate would most likely be at the very high end over a 24 month period. The rate is more likely to be in the 1-2% range. Though there will always be critics on any cap, I am reasonably confident that a cap at or near that penetration level would be acceptable to the municipalities. Based upon the earlier exhibit I sent you, we estimated that at 3% it could be up to 270,000 homes but would most likely be closer to 200,000 homes.

III. Metrics to determine Trial Period success/failure – FHFA to provide list of any additional metrics that they would like included in the Trial Period and that would be helpful in determining success/failure of the trial. Metrics we discussed included:

- a. Foreclosure/Delinquency comparisons – How foreclosure rates and tax delinquency rates compare between non PACE and PACE homes
- b. Sale price comparisons – How sale prices compare between non PACE and PACE homes
- c. Energy savings – What were the achieved energy savings vs. the hoped for/“benchmarked” savings (e.g. are savings approximating the annual tax assessment – see item iv. below)

IV. “Benchmarks” for energy savings – FHFA to approve “Benchmarks” for PACE programs to be used by the Department of Energy. For example:

- a. Foreclosure/Delinquency - PACE properties must not have foreclosure or tax delinquency rates above those for the jurisdiction as a whole (currently, in the largest PACE municipality, Sonoma, the tax delinquency rate on PACE is running at half the rate of general delinquency rate).
- b. Energy savings - I have been thinking about this for some time and it is complicated by the fact that benchmarks would vary depending upon where you live (climate will impact your savings, the mix of the improvements that are made, and behavior changes all impact energy savings). I think the easiest benchmark is to strive for cash flow positive (energy savings exceeds annual assessment). In simple terms, this would mean that the “Benchmark” is to cover the annual tax assessment. As you mentioned, this may not be the motivating force for all retrofits and perhaps it should not be a fixed requirement. But ultimately it is the best means to ensure that the borrower’s ability to pay is improved by PACE.
 - i. **Micro Benchmarks** – FHFA to approve DOE micro benchmarks that outline generally the type of savings that homeowners should expect from different retrofit projects recognizing that they will vary based upon climate, house type and the combination of projects. Savings to investment ratio will be the final metric used for project approval.

V. Truth in Lending Act – FHFA to provide “Truth in Lending Act” language that they would like incorporated into all loan documents, including a phone contact requirement so that questions can be answered and compliance ensured. Currently, the administrator (e.g. Renewable Funding) or the Municipality (e.g. San Diego) are the TILA contacts. So I think this is covered though not sure if it is a requirement within the Best Practices.

Misc. - Tax Credit/Tax Refund – I owe you an answer how this works under current best practices.