March 16, 2020

The Honorable Mark Calabria
Director
Federal Housing Finance Agency
400 7th Street SW
Washington, DC 20219

Re: PACE Request for Input, Notice No. 202-N-1

Director Calabria:

The Housing Policy Council[1] and its members applaud the FHFA for the actions taken to-date to protect Fannie Mae, Freddie Mac, and the Federal Home Loan Bank (FHLB) system (collectively, the government-sponsored enterprises or GSEs) from the detrimental effects of Property Assessed Clean Energy (PACE) programs, which violate the legal standing of first lien mortgages. We appreciate the opportunity to comment on the additional measures that the FHFA may want to impose, all of which appear to be appropriately intended to discourage PACE activity through enhanced monitoring and/or the application of new pricing and product limitations.

While we agree with FHFA's intent and support achievement of the objectives, we have concerns that some of the various policy options presented in the RFI questions would pose a significant operational burden and cost on lenders and servicers as well as consumers. Therefore, HPC would suggest that FHFA consider an approach that relies on the GSEs themselves to perform research using commercially available PACE lien data and then to conduct ongoing tracking activities necessary to discern and prohibit new PACE liens or call for termination of existing PACE liens that encumber properties backed by the GSEs.

HPC members agree with the FHFA's evaluation of the impact of PACE. As described in your RFI, PACE programs have numerous features that raise safety and soundness concerns, including:

- the disruption of traditional mortgage lien status,
- the potential to conflict with mandatory ability-to-repay underwriting (which is a consumer protection concern as well),
- the perpetuation of outstanding, long-term financial obligations with transfer of property ownership, and
- imposition of unnecessary and excessive rates and fees on consumers.

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[1] The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers, mortgage and title insurers, and technology and data companies. HPC advocates for the mortgage and housing marketplace interests of its members in legislative, regulatory, and judicial forums. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families. www.housingpolicycouncil.org

Further, we agree with FHFA's observation that the recordation of these loans, as tax rather than land records, complicates and hampers standard identification and monitoring practices that would enable a lender or servicer to know with certainty the presence of these liens/assessments. As a result, the capacity of a lender or servicer to efficiently and easily detect the placement of these liens on properties, either before or after the mortgage is originated, is limited. This defect also works to the detriment of homebuyers and appraisers.

The GSEs, however, with concentrations of business in affected PACE communities, are in a position to evaluate the implications of PACE activities, using commercially available data that private firms compile from local tax records. These firms collect, validate, and monitor this information over the full life-cycle of the PACE liens, an important feature given the transfer of properties with the liens in place. HPC would recommend that the FHFA and GSEs pursue an agreement with a data company that offers this type of comprehensive property- and loan-level PACE data to conduct analysis of not only the GSEs' exposure but also the terms and conditions of these liens, the trends in PACE lien origination, the performance of PACE liens, and their impact on first lien mortgages on PACE-encumbered properties, all of which should be considered as part of any future policy-making.

We would also support any GSE-directed communications and/or outreach campaigns in the affected PACE communities to warn consumers of the consequences of PACE liens / assessments on their homes and the implications for breach of their mortgage terms. Should FHFA consider this type of approach, HPC and its members would encourage additional policy dialogue with the industry to discuss the feasibility and benefits of various options, including communications methods, geographic targeting, and timing.

We appreciate FHFA's vigilance in tracking PACE activities nationwide and ongoing consideration of additional policy measures to discourage the use of these programs. While we recommend that FHFA forgo any policy changes that would impede consumer access to credit or impose higher costs on consumers to obtain home loans, we do support additional work by FHFA and the GSEs to obtain commercially available PACE data and other information needed to perform comprehensive analysis that will assist in the design of future policies to prevent the expansion of PACE programs.

Should you have any questions or want to discuss this critical issue further, please do not hesitate to contact our SVP for Mortgage Policy, Meg Burns, at 202-589-1926.

Yours truly,

Edward J. DeMarco

Edward J. DeMarco
President
Housing Policy Council