



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. 2020-N-1

Dear Director Calabria:

On behalf of the 2.2 million credit union members we represent, the Heartland Credit Union Association (HCUA) appreciates the opportunity to comment on the Federal Housing Finance Agency's (FHFA) Notice and Request for Input on the Property Assessed Clean Energy (PACE) Program.

The FHFA, as a regulator for Fannie Mae, Freddie Mac and the Federal Home Loan Banks, is seeking public comment on residential energy retrofitting programs financed through special state legislation enabling a "super-priority lien" over existing and subsequent first mortgages. The FHFA is particularly interested in feedback on potential changes to its policies for its regulated entities based on safety and soundness concerns.

In general, PACE financing permits a property owner to finance the purchase of energy-related retrofitting or improvements and pay for those improvements through a special assessment on the property. PACE programs are authorized through the passage of state-level legislation and implemented on a local level. These state-approved programs typically allow the creation of special districts where a local municipality assess levies on a property on which the owner has agreed to PACE financing arrangement. There are 21 states with authorized PACE programs, but there are only active programs in California, Florida, and Missouri.

As PACE financing programs have grown in number over the past decade, these unconventional loan programs have remained a serious concern for credit unions, consumer groups, and other entities participating in the housing market. The Missouri PACE program includes a property tax lien that is a super-priority lien over all other liens on the property. This lien priority makes selling property and refinancing loans especially difficult for consumers. While HCUA supports the general goal of increasing access to energy efficient housing modifications, however the absence of conventional consumer protections and adequate safeguards have left homeowners vulnerable and could lead to unexpected or unintended effects on the housing market. FHFA has stated that the continuation of PACE programs and their adverse impacts merits review for potential modification. This Request for Input asks for public comment on enhancing the actions to be taken regarding PACE liens in light of their continued threat to first lien mortgages and to homeowners and home purchasers from the lien priming effects of PACE loans.

While HCUA agrees with the FHFA's concerns about consumer protection and GSE safety and soundness with PACE liens, we do not agree that the FHFA should direct the GSEs to decrease loan-to-value ratios for all new loan purchases in states or in communities where PACE loans are available. Such a policy would negatively impact all consumers in a PACE program state, not merely the consumers with PACE loans. This policy could particularly negatively impact low and moderate-income consumers and first-time home buyers, who often use lower down payment mortgages to purchase their homes.

6800 College Boulevard
Suite 300
Overland Park, KS 66211

223 Madison Street
Jefferson City, MO 65101

2055 Craigshire Road
Suite 200
Saint Louis, MO 63146

901 SW Topeka Boulevard
Topeka, KS 66612

2544 North Maize Court
Suite 100
Wichita, KS 67205

TF 800 392 3074

HeartlandCUA.org

Also, we do not agree that the FHFA should direct the GSEs to increase their Loan Level Price Adjustments (LLPAs) or require other credit enhancements for mortgage loans or refinancings in communities with available PACE financing. Increasing LLPAs would negatively impact consumers as these costs would have nothing to do with their credit profiles or ability to qualify for financing.

In addition, HCUA opposes any additional consumer disclosure and reporting requirements regarding PACE loans. Collecting and reporting information regarding PACE loans would be burdensome and costly, particularly for smaller credit unions with limited resources. Furthermore, requiring consumer disclosures on PACE loans by loan servicers would not be helpful to consumers who would either not understand the context for the disclosure or would be alarmed by the disclosure if they already have a PACE-financed project.

Instead of these policies, the FHFA should provide guidance and encourage the Consumer Financial Protection Bureau (CFPB) to promulgate a PACE financing rule that subjects PACE programs to the Truth in Lending Act (TILA) requirements. As mandated by the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA or S. 2155), this rulemaking should be a high priority for the CFPB. In general, the CFPB's PACE Financing Rule should address:

- Proper underwriting requirements for PACE financing, including an "ability-to-repay (ATR) analysis based on verified and documented information about the borrower;
- Clear, understandable disclosures of the key terms, repayment, and potential impacts of a PACE lien provided to the homeowner prior to the execution of the contract;
- Debt-to-income (DTI) ratios, which should not exceed the ratio established for traditional mortgage loans;
- Its application to any type of residential PACE lending, regardless of name or how the program is marked to the consumer;
- Preemption of state laws, unless the state has established a higher standard of consumer protection.

The FHFA should also work with the financial services industry and consumer advocates to educate state and local lawmakers on the problems with PACE financing. The FHFA should strongly urge these lawmakers to establish clear requirements regarding the subordination of PACE liens to mortgage loans.

As always, we appreciate the opportunity to review this issue. We will be happy to respond to any questions regarding these comments.

Sincerely,



Brad Douglas
President/CEO