FLORIDA DEVELOPMENT FINANCE CORP.

March 16, 2019

Federal Housing Finance Agency
Eighth Floor
400 Seventh Street SW
Washington, DC 20219

ATTN: PACE Request for Input, Notice No. 2020–N–1.

VIA: https://www.fhfa.gov/SupervisionRegulation/Rules/Pages/Property-Assessed-Clean-Energy-(PACE)-Program.aspx#SubmitForm

Dear Sir or Madam,

Thank you for the opportunity to provide responses to the Request for Input ("RFI"). The Florida Development Finance Corporation ("FDFC") is a special development finance authority established by the Florida Legislature in 1993 for the economic development purposes of assisting for-profit and not-for-profit business and organizations with access to capital and job creation. The FDFC partners with the Florida Energy and Resiliency District ("FRED" or the "District") to levy and collect the voluntary Property Assessed Clean Energy ("PACE") special assessments that are the mechanism for repayment. This mechanism furthers the policy set forth by the state legislature in 2008 establishing PACE as a financing option to promote the installation of energy conservation, energy efficiency and wind resistance improvements that potentially lower energy costs and protect properties from storm damage in Florida.

As a conduit issuer, the FDFC established an open-platform PACE Program for both residential and commercial properties to issue taxable revenue bonds. Going beyond just acting as a conduit issuer, our PACE Program is sensitive to concerns with PACE financings dealing directly with residential property owners by providing a separate levels of oversight beyond the PACE Providers responsibilities for underwriting and contractor management. The FDFC review's each transaction for product eligibility and appropriateness, product pricing, correctness of documentation, quality control of data, eligible jurisdictions, and calculations for initial financing, bonding and assessment collection.

There is an effort to portray PACE financing and mortgages as similar, but this is not the case. The PACE industry focuses on qualifying the property and the eligible measures first, while the mortgage industry focuses on a potential borrower's ability to purchase or refinance a home. In either case, both seek to determine the creditworthiness of the property owners. Ultimately, a property owner should have the right to review and choose all available financing options, whether they are financing energy efficiency measures or purchasing a home. Unlike the financing of other purchases, such as vehicles, furniture, boats, appliances, or the requirement to pay property taxes and assessments that may be placed by a city or county, PACE financing remains misunderstood. Without evidence of impairment to the mortgage industry, the FHFA, HUD and GSE's have currently eliminated any opportunity for property owners to gain a mortgage approvals if they choose PACE to finance improvements that can improve the quality, efficiency and resiliency of their property.

In lieu of evidence, critics of PACE point to "lien-priority", "ability to pay", "consumer protections" and "lender consent" as major concerns to justify a policy of exclusion. For discussion purposes only, below are examples of typical arrangements for an average mortgage, PACE financing and a used car loan based on principal and interest only with no assumptions of other fees, taxes, or expenses incurred:

Mortgage (median)[1]:	$244,900.00	PACE Financing (avg.)[2]:	$15,000.00 **THIS IS NOT THE LIEN**
Term:	30 years	Term[2]:	15 years (avg.)
Interest Rate[3]:	3.66%	Interest Rate[2]:	5.84% (avg.)
1st yr. Principal (avg.):	$381.11	1st yr. Principal (avg.):	$53.71
1st yr. Interest (avg.):	$740.59	1st yr. Interest (avg.):	$858.93
Monthly Amount:	$1,121.70	Monthly Amount:	$125.29
Yearly Amount:	$13,460.39	Yearly Amount:	**$1,503.43**** **THIS IS THE LIEN**
Total Interest *:	$158,911.85	Total Interest *:	$7,551.40
Total Paid*:	$403,811.85	Total Paid*:	$22,551.40

Used Car Loan (avg.)[4]:	$20,446
Term:	5.35 years
Interest Rate (avg.)[4]:	8.04%
1st yr. Principal (avg.):	$265.44
1st yr. Interest (avg.):	$127.67
Monthly Amount (avg.):	$393.11
Yearly Amount:	$4,717.31
Total Interest*:	$4,791.64
Total Paid*:	$25,237.64

* if held to full term with no prepayment ** amount added to the tax bill as a special assessment

[1] As of March 10, 2020, source: https://www.zillow.com/home-values/
[2] As of March 10, 2020, source: FDFC PACE Program
[3] As of March 10, 2020, source: https://www.bankrate.com/mortgages
[4] As of January 8, 2020, source: https://www.lendingtree.com/auto/debt-statistics/

Lien Priority
There is an incorrect narrative about the "super-priority lien" or "highest priority lien" or "lien-priming" status of PACE financing. Although PACE liens are in a first position and co-equal with the collection of taxes in relation to a mortgage due to its placement on the tax bill, opponents of PACE financing incorrectly define a "PACE Lien" as the entire PACE financing amount. Using the previous financing examples, opponents would have a reader assume that upon a foreclosure event, the PACE financing amount of $15,000 is immediately due and payable prior to the $244,900 mortgage. In reality, PACE financings are not subject to acceleration and runs with the property. Therefore, only $1,503.43 of the PACE financing amount is due that year.

Perhaps the most critical point of this lien priority argument is that it draws a "red-line" to any state and local governments that create policies affecting the mortgage industry, even if it addresses areas of concern for policy-makers. In Florida, the legislature is concerned about energy consumption and the ability of properties to withstand storm-related events. By adopting PACE, the legislature is allowing the use of the tax-bill as a repayment mechanism for limited property improvements that further their policy to address these concerns. The Florida Supreme Court upheld the use of this mechanism.[5] Instead of using taxpayer dollars, this mechanism incentivizes private capital to fund these improvements in support of the policy as a type of public-private partnership. If the placement of PACE assessments on a tax bill is a problem for the mortgage industry because of its lien priority then any tax or fee for services used by a local government such as waste collection, emergency response, road maintenance, schools, water management, street lighting or even tax increases should be criticized and excluded from government-backed mortgage services.

Ability to Pay
We also find an incorrect narrative of PACE when considering an ability to pay. PACE financings approach their underwriting process as an assessment that runs with the land. Therefore, the property must qualify first then the current property owner is underwritten to determine an ability to pay subject to state, local, Program and PACE Provider guidelines. Opponents of PACE point to expected delinquencies and foreclosures when there is evidence that the same occur on mortgages serviced by governmental agencies.[6] A recent article stated that "… mortgage defaults and payment delinquencies affect both lenders and Fannie Mae and Freddie Mac. In areas where natural disasters hit, we found, bank lenders transfer substantially more mortgages to the government-supported enterprises." [7] Other types of financings, such as car loans[8] and credit cards [9] are affected as well and a concern for all financing products.

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[5] Fla. Bankers Ass'n v. Fla. Dev. Finance Corp., 176 So. 3d 1258 (Fla. 2015)
[6] https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/NOV2019-FPR-Refi-FPM.pdf
[7] https://www.bloomberg.com/opinion/articles/2019-10-03/when-climate-change-leads-to-mortgage-defaults
[8] https://www.americanbanker.com/news/auto-loan-delinquencies-hit-eight-year-high
[9] https://www.aba.com/about-us/press-room/press-releases/aba-report-consumer-delinquencies-mixed-in-third-quarter-of-2019

At the time of application, the mortgage industry and PACE financings both utilize credit reports to assess ability to pay, but the mortgage industry requires written documentation to verify sources and adjustments to the income provided. PACE Providers also request income. The borrowing amount along with the purpose of borrowing is the main difference between a home purchase and a home improvement using PACE financing. Given the previous example, the monthly impact of the average PACE financing is approximately $125 (maybe $135 with annual admin and tax collector fees), as compared to an average monthly used car loan of approximately $395 or an average monthly mortgage of approximately $1,125 (maybe $1,800 - 2,000 with escrow account and PMI).

Third-party financing companies ascertain extending credit to property owners by pulling a credit report. Property owners requesting PACE financing submit an application to go through the underwriting process of the PACE Provider, which includes not only certain equity requirements on the land, but a credit report on the applicants. It could be argued that PACE Providers take risks when their PACE financings are transferred to a new property owners. However, the new property owner would have been underwritten by a mortgage company during the analysis of affordability included in their review of the borrower before a purchase or refinancing.

In addition, many state statutes incorporate forms of ability to pay in order to qualify for PACE financings, including but not limited to, no late mortgage or tax payments, minimum equity requirements and maximum assessment amounts. Property owners also can achieve savings on their utility bills or insurance premiums for home improvements completed. The Consumer Finance Protection Bureau ("CFPB") has been tasked to review and implement some level of the Truth In Lending Act ("TILA") for PACE on this subject. They should be allowed to complete their review.

Consumer Protections

The PACE Industry promotes that it provides enhanced consumer protections[10]. These protections are not taken lightly by the FDFC and additional steps are instituted by the FDFC PACE Program. No system or policy will ever eliminate all risk, which is why consumer protections should always be a living, breathing effort that strives for constant improvement. The term "consumer protections" can be very broadly defined and include areas such as disclosures, contractor management, compliance, verifications, etc. The FDFC PACE Program has a unique approach to holding PACE Providers and contractors accountable in Florida whereby a) the overall Program and the District is not managed by a PACE Provider, b) all products and pricing are reviewed independent of the PACE Provider before obtaining a notice to proceed, c) all calculations for assessments and bonding have multiple independence checks and balances, and d) the Program provides an additional point of contact for the property

[10] https://www.pacenation.org/wp-content/uploads/2017/02/PACENation-Consumer-Protection-Policies-v2.0-02.17.17-with-attachments.pdf

owner beyond the PACE Providers to address issues. When reviewed side-by-side, PACE offers certain consumer protections that most commonly do not exist in mortgage lending or non-PACE home improvement arrangements.

Mortgage Lender Consent

State and Local Governments do not consult with mortgage lenders on the impacts of adjusting tax collections or assessments imposed on a property and yet these actions occur annually without protest by HUD, FHFA, GSE's or the mortgage lending industry. Mortgage lenders perform public record searches to determine tax bill amounts and impose escrow or impound accounts to make sure the tax bill is paid. In Florida, the PACE statute requires the property owner to notice their current mortgage lender 30 days prior to signing a PACE financing agreement[11]. Regarding liens and public notice requirements, the 30-day notice to lender requirement creates a delay on the placement of any notice of lien in the public record. Once beyond the 30-days, there is a 5-day[12] requirement to place a notice of lien in the public record. It is important to note that the definition of the lien in Florida is only the annual assessment amount, not the entire financing amount. In addition, the FDFC PACE Program has developed and implemented a Release of Lien requirement for our PACE Providers upon full prepayment. We have heard discussions of a PACE lien registry by the PACE Industry, but have not been privy to the status of its implementation.

Responses to Questions

With regard to other questions, we cannot provide additional comments. The use of voluntary special assessments on the tax bill as the repayment mechanism is a policy decision by states to encourage private capital to fund home improvements that reduce energy consumption and harden structures to endure storm-related events. PACE is also an economic development tool that stimulates job creation, supports manufacturing and promotes the installation of qualifying improvements. It also improves quality of life, addresses maintenance issues and positively impacts home values.

[11] §163.08(13), Florida Statutes: "At least 30 days before entering into a financing agreement, the property owner shall provide to the holders or loan servicers of any existing mortgages encumbering or otherwise secured by the property a notice of the owner's intent to enter into a financing agreement together with the maximum principal amount to be financed and the maximum annual assessment necessary to repay that amount."

[12] §163.08(13), Florida Statutes: "Any financing agreement entered into pursuant to this section or a summary memorandum of such agreement shall be recorded in the public records of the county within which the property is located by the sponsoring unit of local government within 5 days after execution of the agreement. The recorded agreement shall provide constructive notice that the assessment to be levied on the property constitutes a lien of equal dignity to county taxes and assessments from the date of recordation."

Similar to cash-out refinancing, home equity loans or HELOC transactions, PACE is an option for homeowner to utilize equity in the property. It does not impair a mortgage lender's investment or the ability to recoup that investment in cases where the homeowner is financially distressed. If both the FHFA and PACE Industry are able to work together, there are areas of improvement for communication and disclosures regarding PACE special assessments and the PACE lien amounts. There is trust in the homeowner for all other financial transactions and we would encourage the FHFA to renew dialogue with the PACE Industry and reconsider the exclusion of PACE on the properties that are served.

Sincerely,

William F. Spivey, Jr.
Executive Director
Florida Development Finance Corporation