



WASHINGTON, D.C.

99 M Street SE
Suite 300
Washington, D.C. 20003-3799

Phone: 202-638-5777

Fax: 202-638-7734

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:

I am writing on behalf of the Credit Union National Association (CUNA) in response to the Federal Housing Finance Agency's (FHFA) Notice and Request for Input on the Property Assessed Clean Energy (PACE) Program. CUNA represents America's credit unions and their 115 million members.

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 assesses levies on a property on which the owner has agreed to a 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. PACE programs vary by state, county and municipality; however, most include a property tax lien that is often a super-priority lien over all other liens on the property. Sometimes, consumers are unaware of this lien priority, or do not fully understand the ramifications of it. This lien priority can make selling property and refinancing loans especially difficult

for consumers. For example, in Missouri, local governments have begun rolling back PACE programs based on the lack of regulation, consumer protections, and the negative impact of these loans on their citizens.

While CUNA supports the goal of increasing access to energy efficient housing modifications, 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.

CUNA has several thoughts on the FHFA's Request for Input. First, while CUNA agrees with the FHFA's concerns about consumer protection and Government Sponsored Enterprise (GSE) safety and soundness with PACE liens, CUNA does not agree 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.

Second, CUNA does 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 jurisdictions with available PACE financing. Increasing LLPAs would negatively impact consumers as these arbitrary costs would have nothing to do with their credit profiles or ability to qualify for financing.

Third, CUNA opposes requirements that lenders and loan servicers provide consumer disclosures and additional reporting regarding PACE liens, as these institutions are not responsible for the risk generated by PACE financing. Collecting and reporting information regarding PACE loans would be burdensome and costly, particularly for smaller credit unions with limited resources. Rather than requiring servicers and lenders obtain information regarding PACE liens, the GSEs could obtain this data from commercial data providers that track PACE liens.

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. These requirements should be directed at the entities that are generating the risk, not loan servicers or lenders.

Instead of these policies, the FHFA should urge the Consumer Financial Protection Bureau (CFPB) to quickly 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 marketed to the consumer; and
- 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 consumer protection issues regarding PACE financing programs. Financial institutions and consumer advocates have strongly urged state lawmakers to establish clear requirements to ensure the subordination of PACE liens to mortgage loans, and we implore the FHFA to do the same.

On behalf of America's credit unions and their 115 million members, thank you for the opportunity to comment on this Notice and Request for Input. If you have questions or would like to discuss CUNA's comments further, please contact me at 202- 465-5769 or EEurgubian@cuna.coop.

Sincerely,

Elizabeth A. Eurgubian
Deputy Chief Advocacy Officer & Senior Counsel
Regulatory & Executive Branch Relations