CALIFORNIA ASSOCIATION OF REALTORS®

March 16, 2020

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

Re: PACE Request for Input, Notice No. 2020-N-1

Director Calabria:

On behalf of the more than 200,000 members of the California Association of REALTORS® (C.A.R.) we thank the Federal Housing Finance Agency (FHFA) for publishing the *PACE Request for Information* (RFI), and for consideration of our comments. The role of Fannie Mae and Freddie Mac (Enterprises) in today's housing market is as important as ever, and their safety and soundness is vital to homeownership. C.A.R. believes it is prudent of the FHFA to analyze potential risks associated with property assessed clean energy (PACE) loans and ideas on how to address them. As the FHFA moves through the process it should consider what actions have been taken by the individual states and counties, and any action taken by the FHFA should be targeted to balance the need to protect the Enterprises while still providing liquidity to the market. C.A.R. believes the FHFA can target guarantee fee increases on only the homeowners who take PACE loans. This should be done on a go-forward basis, so homeowners have been properly notified of the increase prior to PACE lien origination.

Don't Punish States Who Have Already Taken Action

A broad increase in fees or tightening of underwriting would be punitive to localities when only a small minority of homebuyers utilize the program. This punitive action seems counter to the role and mission of the Enterprises to provide broad support to the market.

In response to the FHFA's early concerns to PACE programs, consumer complaints, and REALTORS® feedback C.A.R. supported bills that increased protections to consumers and the Enterprises. Over the last decade, California has passed laws to improve the PACE program that include:

- A TRID-like disclosure for PACE loans (California Code SHC Section 5898.17 (a))
- A three-day right to walk away from a PACE loan after signing the contract (California Code SHC Section 5898.16 (b)(1)).
- An "ability-to-repay" provision for PACE loans (California Code PRA Section 26060 (b)).
- Creating the PACE Loss Reserve Program designed to mitigate the potential risk to mortgage lenders associated with residential PACE financing. (California Code PRC Section 26060 (b)).

If the FHFA put forward a proposal that increases the guarantee fee, reduces LTV or DTI, on all borrowers across the state or locality, it is ignoring these laws that have improved the PACE program in California. The FHFA should look for a solution that can still achieve its goal of protecting the Enterprises but is narrow enough to only effect PACE borrowers.

Targeted Actions

C.A.R. looks to RFI question #2 as an appropriate response to PACE liens. Question 2 asks about increases in the LLPA. The FHFA should increase the LLPA of any individual loan that places a PACE lien on a property. The FHFA should not do a blanket increase in an entire localities LLPA's. In practice, a borrower would be:

- Notified at mortgage origination of an increase in their mortgage payment if a PACE lien that is senior to the first-mortgage is taken out after mortgage origination.
- At time of PACE origination, a disclosure would inform the borrow that the PACE loan may cause an increase in their mortgage payment and to check with their mortgage servicer prior to PACE origination.
- The servicer is notified that a PACE lien has been placed on the property.
- A higher guarantee fee is added to the monthly mortgage payment to protect the Enterprises against any additional risk from the loan.

This proposal may require states to pass laws to comply. The FHFA would need to provide appropriate time for states and localities to enact such laws.

Risk to Enterprises is Unknown

The RFI raises a number of risks associated with PACE liens. However, the true cost and magnitude of the risks are unknown. So far, there has been zero to no risk to the Enterprises. California's PACE program has been around for a decade and the Enterprises have experienced no losses because of the program. In practice, because lenders will not loan on a property with an existing PACE lien in senior position the tax liens do not "run with the land." Instead, PACE loans are paid off when the property is sold or the loan is refinanced.

This history of no lender losses and the strong oversight enacted by California over the past decade place the risk to the Enterprises as minimal. However, California's PACE program has only existed in a market with increasing or stable home prices over the past decade which helps to minimize risk. It is unknown how PACE loans will perform during a recession or a housing market with declining home prices. It is because of this unknown that C.A.R. supported the changes to California's law strengthening the program.

Thank you for consideration of C.A.R.'s comments. If you would like to discuss any of the issues raised in this letter please contact Matt Roberts, C.A.R.'s Federal Government Affairs Manager at matthewr@car.org or 213-739-8284.

Sincerely,

Jeanne Radsick

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President, California Association of REALTORS®

Cc:
National Association of REALTORS®