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March 16, 2020

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
400 Seventh Street SW
Washington, DC 20219

Re: Notice and Request for Input, No. 2020-N-1, Property Assessed Clean Energy (PACE) Program

- Online Submittal: [https://www.fhfa.gov/SupervisionRegulation/Rules/Pages/Property-Assessed-Clean-Energy-\(PACE\)-Program.aspx](https://www.fhfa.gov/SupervisionRegulation/Rules/Pages/Property-Assessed-Clean-Energy-(PACE)-Program.aspx)
- Email Submission: RegComments@fhfa.gov

Dear Mr. Pollard,

The County of Sonoma is writing to express our comments in response to the Request for Input (RFI), No. 2020-N-1, Property Assessed Clean Energy (PACE) Program.

Sonoma County does not believe the FHFA has a rational basis for directing the Enterprises to decrease loan-to-value ratios, increase loan level price adjustments, or take other drastic measures proposed in the RFI because these proposed actions are based on flawed and unsupported assumptions that PACE assessments increase borrower default risk, do not increase property values, and are different than other assessments.

The California Legislature pioneered PACE legislation when it adopted California Assembly Bill 811 (Cal. Stats. 2008, Ch. 159), amending Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code, entitled Contractual Assessments. The California Legislature found that establishing contractual assessment programs to fund energy efficiency and renewable energy improvements would serve the critical public purpose of addressing global climate change.

In 2009, Sonoma County established the Sonoma County Energy Independence Program (the "SCEIP"). The SCEIP is one of two county programs in California where the local government (Sonoma County) is the originator and underwriter of the PACE financing. The SCEIP follows California statutes and local policies governing PACE financing. The SCEIP does not use third-party brokers, agents, or administrators in connection with its program.

In the over ten (10) years the SCEIP has been operating, it has disbursed funds for over 2,500 assessments. Our records indicate that the tax delinquency rate for property owners with SCEIP

assessments is typically about one-half the normal tax delinquency rate for other properties in the County, which flatly contradicts FHFA's unsupported risk assumptions. By enabling property owners to take responsible energy and water conservation actions, the improvements financed by the SCEIP can reduce utility bills (thereby assisting property owners in meeting their other obligations, such as making mortgage payments) and increase property value. At the same time, the SCEIP boosts the local economy, the California power grid, national and global energy interests, and makes it possible for Sonoma County to fulfill energy and water conservation and climate protection commitments.

Not only does our data show lower delinquency rates for property owners with SCEIP assessments, there are other characteristics unique to assessments that further reduce risk to lenders. For example, most state laws, including California law, do not allow a local government to accelerate the amount due on an assessment in the event of a delinquency. Only the unpaid, overdue amount would be due. Lenders can protect their interest by paying this amount, adding it to the mortgage due, and collecting it from the property owner as part of the mortgage, with interest.

Additionally, the SCEIP participates in the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) PACE Loss Reserve Program, authorized by the California Legislature's Senate Bill 96 (2013). One of the purposes of the program is to reduce risk to mortgage lenders by making first mortgage lenders whole for direct losses as a result of a PACE lien in a foreclosure or forced sale. The program covers two types of eligible losses: (1) PACE assessments paid while a first mortgage lender is in possession of the property during a foreclosure, and (2) losses incurred by a first mortgage lender resulting from PACE assessments being paid before the outstanding balance in a forced sale. Additionally, by tracking the performance of PACE portfolios over a long period of time, the program can provide detailed information on the actual credit risk associated with PACE financing.

FHFA's risk assumptions also fail to account for the SCEIP's screening process and eligibility requirements, which are designed to protect consumers and reduce risk for the SCEIP and its bondholders, with a resulting reduction in risk to mortgage lenders. Like every other PACE program, Sonoma County has adopted a set of conditions and restrictions for eligibility for PACE programs. These restrictions and conditions appear to work well, and in our view adequately protect the interest of mortgage lenders. These SCEIP eligibility criteria include the following:

- The property must appear on the Sonoma County secured tax roll.
- SCEIP financing may not be used for a property listed for sale.
- Property title must be vested in the applicant, without federal or state income tax liens, judgment liens, or similar involuntary liens on the property.
- All property taxes for the subject property must be current for the previous three years (or since property owner took ownership if less than three years). In addition, the property owner must be current on all property taxes for any additional properties owned in the County. This includes

any property outside the subject property that is owned by any of the applicants on title. The applicant cannot be on a property tax payment plan with the County as this is considered delinquent.

- The property owner must be current on mortgage payments as demonstrated on the most recent mortgage statement.
- If a property owner was involved in a loan modification for default, the loan modification must have been completed at least one year prior to application filing. In addition, the applicant must provide the most recent six months' worth of mortgage statements on the new loan showing no late payments.
- The property owner is not in bankruptcy for any of the owner's properties and the property is not an asset in a bankruptcy proceeding. If property owner has been in bankruptcy on any owned properties within the previous three years from the date of application filing, the property owner may only participate in the SCEIP if the bankruptcy concluded a year prior to application filing and they can provide documents that all liens have been current for the six months prior to their application date. Property owners who have declared bankruptcy more than once are not eligible for SCEIP.
- The property owner does not owe more on the property than the property's market value plus the requested financing amount (i.e. "lien to value ratio" is 100% or less). The amount owed on the property is the sum of all existing liens, including tax abatements, plus the requested financing amount. In order to compute the balance on a Home Equity Line of Credit, the total amount available is used since this amount could be used by the applicant at any point after application submission.
- For residential properties, the total amount of requested funding must be less than 10% of the market value (i.e., "project to value ratio" is 10% or less).
- The sum of the annual property tax and assessments plus the additional annual SCEIP assessment must not exceed 5% of the property's market value (i.e., "assessment to value ratio" is 5% or less).
- If the property is subject to Covenants, Conditions and Restrictions (CC&Rs), Homeowners Association policies, or Historic District policies, the property owner must furnish written permission authorizing the installation from the entity placing the restriction.
- The improvements must be permanently affixed to real property.
- The physical installation or construction of the improvements being financed cannot have begun.
- The program requires building permits for all improvements financed. In addition, before disbursing funds, those permits must be signed off as "final" by the building jurisdiction.

- Improvements to be covered by the requested financing must comply with the technical specification requirements for each type of improvement as determined by the SCEIP.
- Each application requires a bid or proposal with the description of improvements and costs associated with each improvement. The SCEIP determines whether the improvement costs are reasonable.

In addition, the County encourages applicants to pursue an energy audit to evaluate the efficacy and cost effectiveness of the proposed improvements.

Not only is the FHFA making assumptions about risk that are not based in fact, the FHFA's proposal is based on a faulty assumption that PACE assessments are somehow different than "traditional" assessments, which as a matter of law, they are not. In establishing PACE programs, the California Legislature, and then the local government entity, have made findings that establishment of a program to install energy efficiency, water conservation, renewable energy improvements, and most recently, seismic and wildfire hardening improvements, serves an essential public purpose. Public funds are extended to complete the project. The project not only serves established public purposes, but also specifically benefits the property that is the subject of the assessment, by reducing utility costs for the property, increasing the value of the property, or even reducing calamity risk.

That is the essence of an assessment: public credit has been extended to complete a project, for a public purpose that benefits particular property. Courts, including the United States Supreme Court, have recognized this power of local government for over a century.

Assessments are established for numerous types of public projects. These include building and maintaining roads, street lighting, landscaping, and water delivery and sewer systems. Necessarily, some of these projects require public ownership of the improvement, and require the participation of a neighborhood block to accomplish the purpose. Assessments related to sewer and road projects would be examples. Other public projects, such as energy, seismic or wildfire hardening upgrades, necessarily involve work on individual properties, and can be accomplished by work on non-contiguous properties. The essence of the project remains the same: a project to accomplish a public purpose, funded with public funds, and benefitting private property. That is a traditional assessment.

FHFA assumes PACE assessments are different because a property owner voluntarily joins the program and agrees to install the energy improvements. This is no different from many existing assessment statutes. Generally, initiation of assessment proceedings requires a petition by some percentage of affected property owners. Federal courts have upheld assessment liens as having priority against prior-in-time mortgage holders even where assessment proceedings were initiated upon the request of a single landowner / developer. There is no legal difference between "traditional" assessments and the contractual assessments at issue here, and the FHFA should not mandate that the Enterprises treat them differently.

It is the County's view that there is no demonstrable risk to the Enterprises from the existing PACE programs; instead, it appears that the Enterprises are enjoying increased security on loans

they own because of the added value of the improvements (over \$83 million in Sonoma County); with de minimus exposure to risk on any individual project.

Certainly, there is no support for the actions the FHFA now proposes: to decrease loan-to-value ratios, increase loan level price adjustments, or take other drastic measures proposed in the RFI. These broad-brush measures would negatively impact communities and penalize potential borrowers. Based on our experience, the existing PACE programs are well-designed and no additional restrictions are necessary.

Sincerely,



Erick Roeser
Auditor-Controller-Treasurer-Tax Collector
County of Sonoma