March 16, 2020

The Honorable Mark Calabria
Federal Housing Finance Agency
400 Seventh Street SW, Eighth Floor
Director
Washington, DC 20019

RE: Comments regarding PACE Request for Input, Notice No. 2020-N-1

Dear Director Calabria,

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), one of the largest state trade associations for credit unions in the United States, representing the interests of approximately 240 credit unions and their more than 11 million members. The Leagues appreciate the opportunity to provide comments to the Federal Housing Finance Agency (FHFA) on its Notice and Request for Input regarding Property Assessed Clean Energy (PACE) Programs.

PACE programs are energy retrofitting programs financed through special state legislation that often enables a ‘‘super-priority lien’’ over existing and subsequent first mortgages. This super-priority lien status and the resulting safety and soundness concerns is prompting the FHFA, as regulator for Fannie Mae and Freddie Mac (collectively, the Enterprises), as well as the Federal Home Loan Banks, to seek input on potential changes to its policies for its regulated entities.

PACE programs and their super-priority lien status are also a serious concern for credit unions. Exacerbating the super-priority lien issue is that PACE loans are not recorded in local land records but in tax records; therefore, they are not part of ordinary mortgage record searches. Unavailable data impacts an applicant’s debt-to-income (DTI) calculation and leaves lenders unaware of the PACE obligation. Furthering this problem, PACE programs lack uniformity and may differ in every community within a state, making it challenging for lenders to identify PACE assessments.

California and Florida are identified as the two most active residential PACE jurisdictions. California enacted in AB 2063, Section 13 (2018), discretionary authority for the California Department of Business Oversight (CA DBO) to require the establishment of a ‘‘real-time registry or data base system” for tracking PACE assessments. The CA DBO has not adopted such regulations.

While the Leagues support the general goal of increasing access to energy efficient housing modifications, the absence of consumer safeguards have left homeowners and lenders vulnerable. The super-priority lien makes selling the property or refinancing the loan difficult for consumers, and the threat of foreclosure when a homeowner cannot afford their increased tax assessments is a very real concern.

In 2010, the FHFA directed the Enterprises not to purchase or refinance mortgages with PACE liens. In December 2017, the Department of Housing and Urban Development (HUD) announced that the Federal Housing Administration (FHA) will no longer insure new mortgages on properties that include PACE assessments.

The FHFA is now considering further actions to address the threat of super-priority lien mortgages associated with PACE loans. While the Leagues do have concerns with PACE financing and the super-priority lien status, we also have serious concerns regarding any efforts that could restrict consumer access to low down payment mortgage credit or policies that would negatively and unfairly impact a broad swath of consumers simply based on where they live. The Leagues respectfully offer the following comments on the FHFA’s potential actions.

Actions Under Consideration

The FHFA is considering directing the Enterprises to decrease loan-to-value (LTV) ratios for all new loan purchases in states or in communities where PACE loans are available. The Leagues strongly oppose taking

such action for several reasons. First, decreasing the LTV ratios for all consumers in a geographic area who may or may not have, or obtain in the future, a PACE loan is both arbitrary and unfair. Second, such a policy could more negatively impact low- and moderate-income consumers and first-time home buyers who often use lower down payment mortgages to purchase loans. Third, in California, just over half of households own their homes—the third lowest rate in the country, and the lowest rate within the state since World War II[1]. Decreasing the LTV ratio will make it even more difficult for California consumers to achieve homeownership. Casting such a policy over a broad swath of consumers who may not ever obtain a PACE loan is unwarranted.

Similarly, the Leagues oppose FHFA's consideration of directing the Enterprises to increase their Loan Level Price Adjustments (LLPAs) or to require other credit enhancements for mortgage loansor refinancings in communities with available PACE financing. Increasing LLPAs or increasing mortgage insurance premiums simply because the borrower is in a PACE eligible community would negatively and unfairly impact consumers as these costs would have nothing to do with their credit profiles or ability to qualify for financing.

The FHFA is considering requiring servicers of mortgage loans for the Enterprises to provide various disclosures to existing borrowers in PACE-eligible communities. The Leagues oppose requiring mortgage loan servicers to provide any additional consumer disclosures.

For example, the FHFA is considering requiring an annual notice informing borrowers in PACE eligible communities that under the terms of their mortgage PACE liens are not permitted. The Leagues believe such a notice would not be helpful to consumers. Consumers likely will not understand the context for this annual disclosure – raising questions and concerns as to why they are receiving the notice. Additionally, consumers may become alarmed by the disclosure if they already have a PACE financed project.

The FHFA is also considering requiring service providers to provide notices to borrowers in PACE eligible communities of the difficulties that may arise in selling or refinancing their home when a PACE lien is placed on their property. Such a notice is helpful but should be provided to the borrowers by the PACE program administrator before any home improvement contract and related PACE assessment contract is signed and before any home improvement work begins. This notice requirement should be included in the forthcoming rulemaking from the Consumer Financial Protection Bureau (CFPB). A notice from the loan servicer is too little, too late.

The Leagues do support FHFA's consideration of requiring states that authorize PACE programs to establish a registry of PACE lending so that information currently only held by PACE vendors or local tax rolls could be available and maintained on an ongoing basis. As noted above, California has the discretionary authority to establish a database but had not yet done so. We believe a database will help protect both consumers and lenders. One avenue of abuse in the PACE realm is the process of contractors "stacking" liens – the practice of offering consumers multiple PACE liens under different financing companies, which compounds unaffordability. Similarly, contractors may "split" PACE financing into two or more loans to disguise the affordability of the product. A database of all PACE loans can help prevent stacking and splitting of PACE loans. Lenders, PACE program administrators, and regulators should all have access to such a database.

Consumer Financial Protection Bureau

Section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (S. 2155) requires the CFPB to prescribe "Ability to Repay" (ATR) regulations that account for the unique nature of PACE financing. Instead of the FHFA creating new policies that would negatively and unfairly impact a broad swath of consumers simply based on where they live, the Leagues recommend the FHFA consult with and encourage the CFBP to promulgate a PACE financing rule that subjects PACE programs to the Truth in Lending Act (TILA) requirements.

We also encourage the FHFA to work with the financial services industry and consumer advocates to educate state and local lawmakers on the problems with PACE financing and super-priority liens. The FHFA should strongly urge lawmakers to require subordination of PACE liens to mortgage loans.

Conclusion

Thank you for the opportunity to comment on this Notice and Request for Input. We strongly encourage the FHFA to carefully consider the impact of any policies that may have the unintended consequences of restricting consumer access to low down payment mortgage credit and making it even more difficult for families to realize their dream of homeownership. If you have any questions regarding our comments, please contact me.

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[1] https://calmatters.org/explainers/housing-costs-high-california/

Sincerely,

Diana R. Dykstra
President and CEO
California and Nevada Credit Union Leagues

cc: CCUL