

March 16, 2020

Submitted Electronically

Alfred M. Pollard, General Counsel
Attn: PACE Request for Input, Notice No. 2020-N-1
Federal Housing Finance Agency
400 Seventh Street SW
Eighth Floor
Washington, D.C. 20219

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

Dear Mr. Pollard:

The Federal Housing Finance Agency (FHFA) has sought public input on residential energy retrofitting programs financed through special state and local legislation enabling a “super-priority lien” over existing and subsequent first mortgages (“Senior Mortgage(s)”), often referred to as Property Assessed Clean Energy, or otherwise known as “PACE” program liens and loans. We appreciate the opportunity to present the following responses to the questions presented in the RFI on behalf of the Federal Home Loan Bank of Chicago as well as the Federal Home Loan Banks (each an “FHLBank” and collectively, the “FHLBanks”) who participate in the governance of the MPF Program.

1. The FHLBanks believe that language in the AMA Program Guides and the Uniform Instruments allow servicers and lenders sufficient means to manage the risks associated with PACE loans.¹

First, the three AMA program guidelines make ineligible any Senior Mortgage loans with a PACE loan or a first lien ahead of the investor at the time of sale into the AMA Programs and make servicers responsible to ensure that first liens are not introduced during the life of the loan ahead of the investor.² The existing product loss structures (including required credit enhancements,) also provide protections to the FHLBanks from the risk of losses that may result from PACE loans.

In addition, the Fannie Mae/Freddie Mac Uniform Mortgages and Deeds of Trust (the “Uniform Instruments”)³ which all AMA programs require, provide lenders with numerous rights through which servicers and lenders may protect the Senior Mortgage; such rights are summarized below.

¹ Other than section 3 of this letter, FHLBanks are not responding to specific questions, but rather will summarize its position related risks to lenders and investors associated with PACE loans.

² MPF Traditional Selling Guide Section 2.6.8, 9.3.1 and MPF Traditional Servicing Guide section 1.6.9; Indianapolis MPP Guide Section 6.5.3; Cincinnati MPP Guide Sections 5.25 and 8.1.

³ Fannie Mae – Legal Documents: <https://singlefamily.fanniemae.com/legal-documents/security-instruments>

Section 4 of the Uniform Instruments restricts a borrower's right to subject a Senior Mortgage to a priority lien without lender's consent and a definitive course of action, approved by lender, to address such lien. If such a lien arises or becomes known, Borrower is required to either promptly discharge the lien, contest the lien, set up payment plan, or to secure from the holder of such lien, an agreement subordinating the lien, each in a manner satisfactory to the lender.

In addition, pursuant to **Section 3 of the Uniform Instruments**, if a lien is found to have attached to, or encumber, a mortgaged property which can attain priority over the Senior Mortgage, the lender can ensure payments are made, to protect the Senior Mortgage position by requiring escrow of payments.

Further, **Section 9 of the Uniform Instruments** provides that *"Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property"* including *"paying any sums secured by a lien which has priority over [the] Security Instrument."* Such amounts disbursed by lender become additional debt secured by the Security Instrument, and bear interest at the Note rate. Often referred to as "protective advances", senior position lenders generally have the right to make advances for any lien or encumbrance which may threaten their Senior Mortgage. Such rights, together with the right of a mortgage holder to receive notice of any foreclosure action, enable lenders to ensure that their Senior Mortgage will not be foreclosed entirely by a PACE loan or other priming lien.

The restrictions and rights noted above provide servicers and lenders with sufficient tools to avoid and/or mitigate losses related to a PACE loan attaching to a mortgaged property.

Worth noting is that to date the AMA Programs have had no measurable losses resulting from PACE loans, reflecting the minimal additional risk posed by PACE loans to the AMA programs and FHLBank members involved in owning or servicing loans in the affected jurisdictions.

Therefore, the FHLBanks believe the risk that a PACE lien is imposed on a property after a Senior Mortgage loan has been originated can best be managed by servicers using tools allowing them to identify when a PACE lien has been created and taking steps to ensure no additional losses to the servicer or investor result from the lien.

2. Harm to borrowers and lenders in jurisdictions permitting PACE loans.

The FHLBanks also believe that imposing lower LTV requirements or increased LLPA and/or credit enhancement requirements for all loans in a jurisdiction, would have a disproportionate impact on all borrowers in the affected jurisdictions, by requiring them to have greater down payments to purchase their homes or have greater equity in their homes to refinance existing mortgages than borrowers in other jurisdictions. FHLBanks believe that subjecting all borrowers in the subject jurisdictions to these penalties, even if they never actually obtain a PACE loan, results in a market cost that likely outweighs the risks. In addition, borrowers unable to meet these new LTV requirements would be limited to lenders not subject to the GSE's requirements, who potentially could take advantage of being the borrowers' only option and impose higher rates. Related, by requiring that all borrowers in these jurisdictions have significantly higher equity positions in order to access GSE mortgages, the proposal would limit GSE loan availability in those locations to wealthier borrowers.

Related, the proposed requirements would likely limit the number of loans FHLBank members could originate in these jurisdictions, and the number of borrowers FHLBank members could serve in these jurisdictions.

None of this potential harm is necessary, when the risk, as small as it is, could be better addressed through monitoring procedures and, if applicable, loss reserves.

3. Response specific to Question 6.

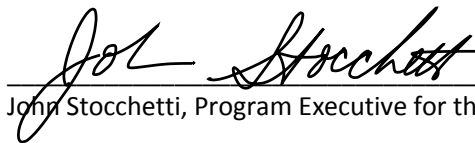
Question 6 - Would it be most effective for states that authorize PACE programs to require a registry of PACE lending so that information currently only held by PACE vendors or local tax rolls could be available and maintained on an ongoing basis? What data should be included in such a registry? What access would be permitted while protecting consumer privacy? Should a federal agency provide for such a registry? What minimum information would be available to allow credit reporting agencies to include PACE obligations in credit reports obtained in connection with mortgage origination or servicing?

Response:

The FHLBanks support a more uniform way of identifying and tracking the status of PACE loans, as a monitoring option for lenders or servicers. In addition, the FHLBanks support any additional actions the FHFA would take to work with other regulators towards a national solution for any debt created post mortgage loan closing that creates the establishment of a priority lien, whether it is prohibiting such priority liens or requiring authorization from the creditors of existing mortgages or lien holders prior to originating such loans.

Thank you for the opportunity to comment on the PACE RFI.

Sincerely,



John Stocchetti, Program Executive for the MPF Program