

Alfred Pollard  
General Counsel  
Federal Housing Finance Agency  
400 7<sup>th</sup> Street, SW  
Washington, DC 20024



March 16, 2020

Dear Mr. Pollard,

The OBL is the foremost trade association for Ohio's banking industry – and is Ohio's only organization focused on meeting the needs of *all banks and thrifts* in the Buckeye State. The non-profit association is comprised of 190 FDIC-insured financial institutions including commercial banks, savings banks, and savings and loan associations ranging in size from just over \$13 million in assets to over \$2.5 trillion. For more than 125 years, the OBL has been the voice of the Ohio banking industry, fostering a cooperation that has made it one of the strongest and most reputable financial trade associations in the country.

On behalf of OBL members, I thank you for the opportunity to provide comment on the request for input from the Federal Housing Finance Agency (FHFA) on the safety and soundness concerns Property Assessed Clean Energy (PACE) financing has on the entities regulated by FHFA. The key area of concern is the super-priority position of residential PACE liens in many jurisdictions where PACE is authorized due to their status as a tax lien. As residential PACE programs have increased marginally in popularity in recent years to finance energy efficiency home improvements a number of problems have also arisen. While the original goals of these programs may have been laudable, there have been significant detrimental impacts on both customers and the housing markets where PACE is authorized.

In Ohio, the legislation authorizing PACE financing was passed in 2010. However, on the residential side, it laid relatively dormant for nearly a decade. This shows that the situation on the ground from state to state varies significantly even in the states where PACE financing is allowed. Though there has been some recent activity on residential PACE financing, it is still not widespread in Ohio. Therefore, no matter what course FHFA decides to take to address safety and soundness concerns posed by PACE financing, we ask that FHFA provide as much advance notice as possible of the changes to provide state legislatures throughout the country an opportunity to address the super-priority lien issue within their state's program. The advance notice will allow the time necessary to avoid any negative impacts on an individual state's housing market that could result from the policy changes FHFA is considering for its regulated entities.

The impact of residential PACE financing on consumers can also be drastic. The FHFA has previously barred Fannie Mae and Freddie Mac from purchasing loans subject to PACE financing and the super-priority lien position. There are not the same disclosure requirements or requirement to assess a borrower's ability to repay as takes place with other loans. The application of the Truth in Lending Act (TILA) by the Consumer Financial Protection Bureau (CFPB) would provide greater protections to borrowers but the CFPB has not yet implemented it despite legislation mandating application of TILA's Ability to Repay standard passed in 2017. Though this would help, many consumers still do not understand the impact

PACE financing can have on the ability to sell or refinance their home and the fact that the borrower may need to pay off the PACE financing for a future buyer to obtain financing.

Though FHFA has previously barred the Enterprises from purchasing loans subject to PACE liens, this does not address the issue that a borrower can later acquire PACE financing where it is available. FHFA has asked whether reducing loan-to-value (LTV) ratios for all new loan purchases in areas where PACE loans are available is a prudent risk mitigation strategy for the Enterprises. In our opinion, this can cause significant issues for lenders and borrowers by creating differing standards which may cause confusion. This could have a significant impact on low- and moderate-income (LMI) individuals who may carry more debt and thus make obtaining financing more difficult. We have similar concerns regarding any requirement that the Enterprises increase their Loan Level Pricing Adjustments (LLPA's). If FHFA moves forward to reduce LTV ratios or increase LLPA's, it should assess the prevalence of residential PACE loans in a jurisdiction when making this decision. We believe that, at this point, gathering additional information through the creation of a registry through a federal government agency, such as the FHFA, would be a prudent course of action to determine the scope of the issue and allow for future action to be properly aligned with the goals.

In short, we believe that there are a number of actions that can be taken to lessen the negative impact of residential PACE financing through additional disclosures that should already be taking place through CFPB regulation. Further, additional information is needed to determine the scale of this issue prior to taking other more drastic actions. We appreciate the opportunity to provide input on this issue. Please do not hesitate to contact me if you have any questions regarding our input or would like any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Boyd", written in a cursive style.

Don Boyd  
State Government Relations Director  
& Legislative Counsel