ICBA
Independent Community Bankers of America®

March 16, 2020

The Honorable Mark Calabria
Director
Federal Housing Finance Agency
400 7th Street SW
Washington, DC 20219

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

Dear Director Calabria:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to provide comments and input regarding the Federal Housing Finance Agency's (FHFA) Notice and Request for Input (RFI) on Residential Property Assessed Clean Energy Financing (PACE). Residential PACE loans are created through state initiatives that authorize counties, municipalities, and other government entities to establish financing programs that allow consumers to retrofit their properties with energy efficient alternatives. PACE loans are repaid through tax assessments on the real property that are typically paid off in installments over fifteen to twenty years. The goal is to attract private investment using bonds sold at the state, county, and municipal levels and providing a super-priority first lien over all other lien holders on a property through a governmental property tax lien.

FHFA released this RFI to address the safety and soundness concerns of the PACE program. In May of last year, ICBA responded to an RFI from the Bureau of Consumer Financial Protection

[1] *The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 52,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 760,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than $4.9 trillion in assets, $3.9 trillion in deposits, and $3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.*

WASHINGTON, DC
1615 L Street NW
Suite 900
Washington, DC 20036

SAUK CENTRE, MN
518 Lincoln Road
P.O. Box 267
Sauk Centre, MN 56378

866-843-4222
www.icba.org

(CFPB) addressing the expanding PACE program and consumer protection concerns that impact borrowers, lenders, and numerous stakeholders in the housing finance industry.[2] ICBA argued that these loans often do not properly consider ability to repay (ATR) and urged the CFPB to exercise its authority to regulate PACE financing projects according to statutory ATR requirements and remedy provisions that apply to residential mortgage loans. Establishing a borrower's ATR is especially important for PACE loans because they remain linked to the homes until fully paid and may diminish the underlying mortgage's overall value in a way that could not have been anticipated at the time of origination. Therefore, ICBA appreciates that FHFA and its regulated entities – the government sponsored enterprises (GSEs or Enterprises) Fannie Mae, Freddie Mac, and the Federal Home Loan Banks (FHLBs) - are concerned about PACE loans' negative impact on the value of mortgages that are bought, securitized, sold, or used as collateral for advances.

In 2010, FHFA directed the GSEs to end their practice of purchasing or refinancing mortgages with PACE liens attached to them. FHFA also warned the FHLBs about accepting mortgage loans as collateral if they have a PACE loan attached to the property, underscoring the risk and inherent uncertainty of these loans. In 2017, the Department of Housing and Urban Development (HUD) announced that the Federal Housing Administration (FHA) would also stop insuring new mortgages that have attached PACE loans, largely due to their super-priority lien status. In 2018, Congress partially addressed the consumer protection concerns with the ICBA-supported Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), granting the CFPB authority to regulate PACE financing projects according to standard Truth in Lending Act (TILA) ability-to-repay requirements that apply to residential mortgage loans.

Ongoing Concerns

In addition to consumer protections, ICBA agrees that PACE loans pose a threat to safety and soundness because they are often applied after the mortgage has been released into the secondary market or placed in portfolio. As noted in its RFI, FHFA rightly points to the fact that it can be challenging to determine if and when a PACE loan is applied to a property, as there is no standardized or consistent method to notify those with a vested interest in the performance

---

[2] https://www.icba.org/docs/default-source/default-document-library/pace-letter-final.pdf?sfvrsn=5df05d17_0

of the loan. Even if there was a feasible way to be notified, the PACE loan represents a retroactive creation of potential risk on a property that supersedes the first-lien mortgage. ICBA and community banks are certainly concerned about this kind of unknown or unaccounted-for risk.

The chance of increased risk also affects homeowners who might suddenly no longer be able to afford their mortgage after accepting a PACE loan. If their ability to repay was not properly or sufficiently vetted, the chances for default are likely to increase. Further, the lack of standardization and regulatory oversight on PACE loan terms and risks opens the door for unscrupulous lenders to extend loans with higher interest rates, hidden administrative fees, and repayment terms of up to 20 years.

Comments on Proposed Changes

To mitigate the potential unknown risks posed by PACE loans, FHFA proposes to direct the GSEs to decrease loan-to-value (LTV) ratios for all new loan purchases in states or in communities where PACE loans are available. A decrease in permissible LTV ratios for new home purchases in entire jurisdictions that permit PACE financing would be unnecessarily punitive. As stated in the RFI, in 2019 California and Florida alone had over 5.4 million GSE loans with unpaid principal balances of approximately $1.18 trillion. We agree that the risk is there and of great concern, but the millions of consumers that live in those states would essentially have less access to mortgage credit, especially LMI borrowers that already struggle with a down payment. ICBA believes this policy will ultimately constrict the housing market in these areas and is a disproportionate response to the risk of PACE loans.

FHFA also asks if it should direct the Enterprises to increase their Loan Level Price Adjustments (LLPAs) or require other credit enhancements for mortgage loans or re-financings in communities with available PACE financing. In our view, this would unfairly impact the vast majority of new home buyers in areas that choose to adopt PACE loans programs. Any additional fees would be arbitrary and unrelated to the credit quality of the borrower and the true risk underlying each individual home loan. This concern also applies to FHFA's proposal to mandate safety and soundness standards for the FHLBs that accept mortgage loans as eligible advance collateral in communities where PACE loans are available. While ICBA appreciates the concerns about the risk of this niche product of loans, we generally find this sweeping approach unnecessary and potentially harmful.

WASHINGTON, DC
1615 L Street NW
Suite 900
Washington, DC 20036

SAUK CENTRE, MN
518 Lincoln Road
P.O. Box 267
Sauk Centre, MN 56378

866-843-4222
www.icba.org

ICBA has strong concerns about an approach that targets all loans with more restrictions in communities that merely allow PACE loans to be made. It is an overly broad and punitive tactic. Before implementing such measures, we strongly recommend conducting a study with detailed quantitative analysis that determines to what extent these changes solve the problem and the larger impact on the housing market. The industry needs to better understand the extent of the threat before a solution is devised. The approaches outlined in the RFI may have far-reaching and uncertain consequences that constrain liquidity and reduce access to homeownership.

Moreover, ICBA suggests that the best way to approach this issue is to work more closely with states and counties that are contemplating or implementing PACE programs. At a minimum, there needs to be a move toward transparency, consistency, and access to data. Stakeholders in a loan's performance need to be apprised if a PACE loan is granted first-lien status. At the same time, it is not the responsibility of the lender that services the loans to collect or report the change in status. Such a task would be onerous and expensive to implement since servicers lack access to the data – to the extent the data exists - and the operational capacity necessary to satisfy a periodic reporting requirement. Tax reports are not readily available, and they lack the detail necessary to identify PACE payments made through the tax rolls. Additionally, as the number of jurisdictions that adopt PACE financing grows, it will become virtually impossible to gather data on each one. It is simply unrealistic to expect lenders and servicers, especially community banks, to track and solicit information about PACE loan activity.

Ideally, a database or registry is needed that provides automatic notification that a PACE loan went into effect on a mortgage made by federally backed depository institution or sold to a GSE. The registry should be extensive, easy to access, regulated, and fully funded by the beneficiaries of PACE loan programs. Such a resource also needs to be balanced with concerns about data privacy.

It is also important to continue the conversation with state and local lawmakers about why the structure of PACE loan programs is challenging to lenders, investors, and consumers. ICBA agrees that these loans are a threat to first lien mortgages. However, only close collaboration with the local lawmakers that create and set the terms for the PACE program initiatives is likely to result in substantive changes. Disincentivizing PACE loans by subjecting whole areas to lower LTVs or additional LLPAs does not address the problems of PACE loans; rather, it is punitive and arbitrary for the clear majority of homeowners who have no desire for this specialized product.

WASHINGTON, DC
1615 L Street NW
Suite 900
Washington, DC 20036

SAUK CENTRE, MN
518 Lincoln Road
P.O. Box 267
Sauk Centre, MN 56378

866-843-4222
www.icba.org

Conclusion

ICBA thanks FHFA for its sustained efforts to reduce the risks posed to the safety and soundness of the GSEs. We recognize that there is no easy solution to the hazards PACE loans present. Yet we hope that you will consider approaches that better target the problematic loans without limiting access to mortgage credit for consumers who just happen to live in jurisdictions that allow PACE financing. We look forward to working with you throughout this process.

Sincerely,

/s/

Ron Haynie
Senior Vice President, Mortgage Finance Policy

WASHINGTON, DC
1615 L Street NW
Suite 900
Washington, DC 20036

SAUK CENTRE, MN
518 Lincoln Road
P.O. Box 267
Sauk Centre, MN 56378

866-843-4222
www.icba.org