NATIONAL ASSOCIATION of REALTORS®

REALTOR®

Maurice "Moe" Veissi
2012 President

Dale A. Stinton
Chief Executive Officer

GOVERNMENT AFFAIRS DIVISION
Jerry Giovaniello, Senior Vice President
Gary Weaver, Vice President
Joe Ventrone, Vice President
Jamie Gregory, Deputy Chief Lobbyist

500 New Jersey Ave., NW
Washington, DC 20001-2020
Ph. 202-383-1194 Fax 202-3837580
www.REALTOR.org

September 13, 2012

Mr. Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
Eighth Floor, 400 Seventh Street SW
Washington, DC 20024

Re: RIN 2590-AA53; Enterprise Underwriting Standards

Dear Mr. Pollard:

On behalf of the over one million members of the National Association of Realtors® (NAR), I am writing in response to the recent Proposed Rulemaking, published at 77 Fed. Reg. 116, (June 15, 2012) (the "PR"), Enterprise Underwriting Standards. NAR members are involved in all aspects of the real estate industry, including buying, selling and managing commercial and residential real property. Our members have an interest in Property Assessed Clean Energy Programs (PACE) programs because of the implications these programs may have for the broader real estate financing sector.

These comments do not respond to every question that is included in the PR; rather, NAR is commenting generally on those elements of PACE programs which have direct relevance to Realtors® and their interests.

Background

PACE programs provide a means of financing certain kinds of home improvement projects. Specifically, PACE programs permit local governments to provide financing to property owners for the purchase of energy-related home-improvement projects, such as solar panels, insulation or energy efficient windows. Homeowners repay the amount borrowed, with interest, over time through an assessment added to their property tax bill.

Over the last three years, more than 25 states have authorized local governments to establish PACE-type programs. In most, but not all, states that have implemented PACE programs, the liens that have resulted from PACE program loans have priority over mortgages, including pre-existing first mortgages. In the case of a mortgagee foreclosing on a property, the PACE loan must be paid off before any other financial obligation running with the property, including first mortgages.

The Federal Housing Finance Agency (FHFA) began reviewing these programs in 2009 and 2010. In a significant action, on July 6, 2010, the FHFA issued a statement that, in part, states:

"*The Federal Housing Finance Agency has determined that certain energy retrofit lending programs present significant safety and soundness concerns that must be addressed by Fannie Mae, Freddie Mac and the Federal Home Loan Banks….First liens established by PACE loans are unlike routine tax assessments and pose unusual and difficult risk management challenges for lenders, servicers and mortgage securities investors….They present significant risk to lenders and secondary market entities,*

EQUAL HOUSING OPPORTUNITY

may alter valuations for mortgaged-backed securities and are not essential for successful programs to spur energy conservation."

This statement, and subsequent statements released by the FHFA expressing concerns about various aspects of PACE programs, chilled the demand for these programs.

FHFA's Proposed Rule Regarding PACE Programs

Previously, the FHFA published an Advanced Notice of Proposed Rulemaking (ANPRM) in response to an order from the U.S. District Court for the Northern District of California. This ANPRM described FHFA's concerns with existing first-lien PACE programs and provided an opportunity for the public and stakeholders to provide the agency with data and comments on these programs.

After reviewing and considering the numerous comments made in response to the ANPRM, the FHFA is proposing the following rule related to PACE programs:

1. The Enterprises shall immediately take such actions as are necessary to secure and/or preserve their right to make immediately due the full amount of any obligation secured by a mortgage that becomes, without the consent of the mortgage-holder, subject to a first lien PACE obligation. Such actions may include, to the extent necessary, interpreting or amending the Enterprises' Uniform Security Instruments.
2. The Enterprises shall not purchase any mortgage that is subject to a first-lien PACE obligation.
3. The Enterprises shall not consent to the imposition of a first-lien PACE obligation on any mortgage.

The FHFA is also proposing three risk-mitigation alternatives that could serve as measures designed to provide additional protection from the risks posed by PACE programs to mortgage holders. Each risk mitigation alternative includes language from the proposed rule, as set forth above, then describes an approach under which, if implemented, the FHFA would allow the Enterprises to accept a first-lien PACE obligation, as follows:

1. Guarantee/Insurance – This approach would allow the Enterprises to accept first-lien PACE obligations but would require that, in the case of a foreclosure or similar default resolution, the repayment of a PACE obligation is guaranteed by a qualified insurer. In addition, the PACE program would be required to maintain a reserve fund that would be equal to the amount that a qualified insurer would pay.
2. Protective Conditions and Standards – This approach would allow the Enterprises to accept first-lien PACE obligations, but only if five conditions are met: (1) The PACE obligation is no greater than $25,000 or 10% of the fair market value of the underlying property; (2) current combined loan-to-value ratio would be no greater than 65%; (3) the borrower's debt-to-income ratio is no greater than 35%; (4) the borrower's FICO credit score is no lower than 720; and (5) the PACE obligation will be promptly recorded in the relevant jurisdiction's public land-title records. In addition, the Enterprises are to treat a home-purchaser's prepayment of an existing first-lien PACE obligation as an element of the purchase price in determining loan amounts and applying underwriting criteria.
3. H.R. 2599 Underwriting Standards - This approach would allow the Enterprises to accept first-lien PACE obligations, but only if the underwriting standards set forth in H.R. 2599, the PACE Assessment Protection Act, were adopted. Some of these key underwriting standards include: (1) the PACE obligation is subject to a written agreement; (2) there are no involuntary liens on the property in excess of $1,000; (3) all property taxes on the property are current and have been current for three years; (4) no notices of default and not more than one instance of property-based debt delinquency have been recorded during the past three years; (5) the property owner has not filed for or declared bankruptcy in the previous seven years; (6) the property owner is current on all mortgage debt on the property; (7) the improvement funded by the PACE transaction has been subject to an audit or feasibility study; (8) the total cost savings realized by the property owner and any successors are expected to exceed the total cost of the PACE assessment; (9) the total amount of PACE assessments for a property shall not exceed ten percent of the estimated value of the property; and (10) as of the effective date of the PACE agreement, the property owner shall have equity in the property of no less than fifteen percent of the estimated value of the property.

NAR Comments on the Proposed Rule

<u>FHFA's Proposed Language</u>

NAR supports the three provisions proposed by the FHFA that would prohibit the Enterprises from investing in or purchasing mortgages on properties that are subject to a PACE first-lien obligation. NAR believes these provisions serve to reasonably limit, in the interest of the safety and soundness of the mortgage finance marketplace, the financial risks that first-lien PACE programs place on the Enterprises.

Comments on the Three Risk-Mitigation Alternatives

NAR recommends that the FHFA not move forward with any of the proposed additional risk mitigation alternatives that the Agency is considering in this proposed rule. The three provisions proposed by the FHFA offer the most effective precautions to ensure the safety and soundness of the mortgage finance marketplace. Offering three additional risk-mitigation approaches that could be used as exceptions to these rigorous proposed provisions could continue to invite unacceptable abuse and risk-taking that could be detrimental to a healthy housing recovery.

These proposed risk-mitigation alternatives also send a mixed message to state and local governments that PACE first-lien mortgage obligation programs, while potentially harmful to housing markets, ***could*** nevertheless be designed in such a way as to be an effective program for energy efficiency savings. This is a dangerous message that should not be encouraged by the FHFA.

Other Comments

NAR continues to be concerned about first-lien PACE loans. These concerns include:

Credit and Mortgage Availability

NAR is concerned that PACE first-lien obligations could have an adverse impact on credit and mortgage availability. Like property taxes, PACE liens take priority over mortgages. That makes the bonds easier for municipalities to sell. But if a home is foreclosed on, the liens are paid before the mortgage lender can recoup any money. The presence or potential presence of a PACE loan, taking the first position ahead of the mortgage, invariably leads to the devaluation of the mortgage as a secured asset. This has the effect of either making mortgages more risky and costly or leading to situations where mortgage credit is tighter or unavailable.

Secondary Mortgage Market Liquidity and Risks to Broader Financial Markets

While the first- lien position offered in most PACE programs minimizes credit risk for investors funding the programs, it alters traditional lending priorities. Underwriting for PACE programs results in collateral-based lending rather than lending based upon the property owners' capacity to pay off the loan. In addition, the absence of Truth-in-Lending Act protections and other consumer safeguards may lead to homeowners taking on more debt and risk than is prudent during a fragile economic recovery.

Disclosure Concerns

Real estate professionals are very concerned about issues they are required to disclose about a property. Depending on state law, real estate professionals are required to disclose anything that could impact the value of a property, from inclusion in a floodplain to the location of a solid waste transfer facility. The more items that are required to be disclosed, the more liability is increased if an item is not included. Other state laws are more ambiguous and require for anything that may materially impact the value of a property. Because PACE loan liens convey with the property and are included in the tax bill regardless of the property owner, this is an item that would need to be disclosed to a potential buyer of the property.

Concerns Related to the Completion of Subsequent Transactions

Because these PACE loans run with the property and not with the property owner, the information on the tax assessment about the loan will need to be explained for each new buyer. If we assume that the average home is sold every five years, and the average length of the PACE loan is 20 years, then a real estate professional will be responsible for explaining this special tax assessment an average of four times over the life of the loan, which could raise questions in the mind of buyers about the additional tax burden they are required to pay and why they are required to pay it.

Refinancing Concerns

For a property under a PACE lien, refinancing could be problematic as well. All of the issues related to lien-priming aspects of PACE loans would also be apparent when the current owner goes to a lender to refinance the property.

Conclusion

NAR appreciates the opportunity to comment on this Proposed Rule addressing PACE loan programs. While NAR does not support moving forward with first-lien PACE loan programs, NAR does support a number of measures to strengthen a homeowners' ability to save energy and save money on the property's utility bill. Initiatives supported by NAR include providing property owners with information about cost effective ways to save energy and positive incentives, such as tax credits that catalyze energy-saving home improvements.

In addition, NAR would support innovative financing programs that offer low- interest loans for residential energy efficiency improvements that incur second-lien obligations. NAR believes that PACE-like programs with second-lien obligations do not pose the same degree of risk to the mortgage finance and housing markets.

NAR appreciates the emphasis on the voluntary nature of PACE first-lien programs, but believes that, at this time, the safety and soundness of real estate mortgage markets must take precedence over other ancillary concerns regarding the housing and mortgage finance marketplace.

Sincerely,

Maurice "Moe" Veissi
2012 President, National Association of REALTORS®