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July 14, 2017

The Honorable Rick Perry  
Secretary  
U.S. Department of Energy  
1000 Independence Ave. S.W.  
Washington, D.C. 20585

U.S. Department of Energy,  
Office of the General Counsel  
1000 Independence Avenue S.W.  
Room 6A245,  
Washington, DC 20585

Submitted via: [Regulatory.Review@hq.doe.gov](mailto:Regulatory.Review@hq.doe.gov)

Re: Regulatory Burden Reduction Request for Information

Dear Secretary Perry:

On May 29, 2017, the U.S. Department of Energy (DOE) published a Request for Information seeking information to help the DOE identify existing regulations and other regulatory responsibilities that can be modified or repealed to achieve reductions in regulatory burdens while meeting the DOE's statutory obligations.

On behalf of the more than 1.2 million members of the National Association of REALTORS® (NAR), thank you for your efforts to reduce regulatory burden on the private sector. NAR applauds your on-going commitment to regulatory reduction to promote economic development and entrepreneurial innovation. There are two areas of concerns that NAR submits for your review and consideration: Property Assessed Clean Energy Programs and the Home Energy Performance Score.

**Property Assessed Clean Energy Programs**

Property Assessed Clean Energy (PACE) programs finance energy-related home improvement projects, such as solar panels or energy efficient windows. Local governments and private companies provide financing to property owners for these projects, and homeowners repay the amount borrowed through an assessment on their property tax bill.

**NAR Concerns**

Credit and Mortgage Availability

NAR is concerned that PACE loans could have an adverse impact on credit and mortgage availability. While in most cases, mortgages take priority over PACE liens, in the case of home foreclosure, the liens are paid before the lender can recoup any money. This makes mortgages more risky and costly.

Disclosure and Transactional Complexity

REALTORS® are very concerned about the potential for errors in the required property disclosures. The more items that are required to be disclosed, the more the opportunity exists for errors to be made when disclosing an item or not explaining it clearly. Because PACE loan are liens that run with the property and are included in the tax bill regardless of the property owner, this would need to be disclosed to a potential buyer. The PACE loan, and the corresponding energy improvement, may be complicated or difficult to explain, and the buyer may be confused about the value of the improvement or the nature of the PACE loan, thereby injecting an element of uncertainty into the transaction.



### Completion of the Transaction

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 the average length of the PACE loan is 20 years, then this special tax assessment will need to be disclosed several times over the life of the loan. This may cause delays in the completion of the transaction or even a cancellation.

### Fraud and Abuse

There have been incidents of fraud and abuse, such as unscrupulous contractors taking advantage of elderly or low-income owners by not clearly explaining the nature of this kind of loan. In addition, they may do shoddy work and the financed improvement may not offer the promised energy or financial savings. Finally, the actual energy efficiency improvements may not equal the hype because of poor equipment, installation or not being maintained properly.

On July 6, 2010, the Federal Housing Finance Agency (FHFA) issued a statement that states, in part: "The Federal Housing Finance Agency has determined that certain energy retrofit lending programs present significant safety and soundness concerns ....First liens established by PACE loans are unlike routine tax assessments and pose unusual and difficult risk management challenges for lenders....They present significant risk to lenders and secondary market entities, 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.

On August 24, 2015, the Federal Housing Administration (FHA) published guidance which clarified that properties with subordinated PACE loans can be purchased and refinanced with an FHA insured mortgage. This guidance included the conditions under which borrowers purchasing or refinancing properties with existing PACE assessments will be eligible to use FHA-insured financing.

While NAR does not support moving forward with first-lien PACE loan programs, the association does support measures to strengthen a homeowners' ability to save energy and save money on the property's utility bill. These efforts include providing property owners with educational resources to learn about cost effective ways to save energy and positive incentives, such as tax credits that they need to improve their homes and save energy.

NAR supports opportunities for homeowners to make their homes more energy efficient and save money on their utility bills. However, alternatives to PACE loans already exist - which do not interfere with established lien priority and include consumer protections.

NAR requests that DOE - especially through their Office of Energy Efficiency and Renewable Energy - engage with HUD, the Federal Housing Finance Agency and other federal stakeholders to ensure consumers are protected from unscrupulous contractors and lenders and help make PACE loans subject to the same disclosure and transparency requirements as other mortgage loan products.

### **Home Energy Performance Scores**

NAR has long had concerns related to the DOE's creation and implementation of the Home Energy Performance Score. NAR has written and met with the White House, various federal agencies and Congress to reinforce our strong concerns about the stigmatizing effects of these kinds of energy labels on real estate at one of the most critical moments in the nation's economic recovery. While NAR is pleased that in establishing this program, the DOE addressed several of NAR's concerns over the reliability and accuracy of home energy rating systems, NAR continues to have concerns about the potential for misuse of such information in the property transaction that place older, less efficient properties at a competitive disadvantage in the real estate marketplace.

NAR will continue to raise these concerns and work with the Administration to evaluate the program on an on-going basis to ensure that the information will be used appropriately and not stigmatize or obstruct the sale of older homes.

NAR's concerns are rooted in the possibility of a government mandate that requires an energy inspection prior to the sale of an individual's home and the creation and use of a mandatory energy score. Such a requirement would add expense, time, and complications to an already complicated transaction without creating any measurable energy efficiency investment in homes. Additionally, the proposed mandatory government energy labeling requirements could have significant negative impacts on homeowners and the housing market across the country.

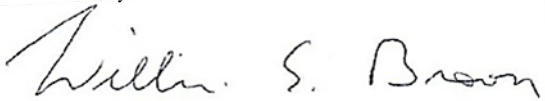
Our members believe that protecting our environment is a top priority, but labeling homes of people who cannot afford the cost to upgrade or update their home will have a negative impact on the housing market, drive down prices, and will hurt homeowners who cannot afford energy efficiency improvements.

NAR believes energy scores, especially if they are required, could have serious negative consequences on the nation's housing markets and individual property owners, including:

1. **Stigmatized property:** Many of the older homes are located in less affluent communities where residents have few resources to upgrade their home. The ratings could cause depressed values of those older homes and in fact result in a disparate impact on those with the fewest resources and a widening of the housing gap. Additionally, these scores may have a disparate impact on minority homeowners, which would likely to violate the Federal Fair Housing Act.
2. **Impact on home values and private property rights:** In general, older homes are not as energy efficient as newer homes, so the concept of a government agency inspecting and then labeling or scoring people's homes in terms of energy efficiency is troubling. Moreover, a home inspection is not performed until the buyer is under contract to purchase a home. Requiring an energy audit prior to listing a home will lead to delays in the home buying process. Adding a mandatory inspection to the home buying process is counterproductive to encouraging a healthy real estate market and opportunities for home ownership.
3. **Discrepancy among ratings tools and raters:** Although the current DOE program strives to standardize all the components of the Home Energy Performance Score, differences in training and scoring properties are still occurring. These differences create uncertainty in the final product and negatively effects how the property is valued in the marketplace.

Thank you for your time and attention regarding these important issues. NAR welcomes the opportunity to promote effective, voluntary energy efficiency practices among property owners throughout the country. The association will continue to work with NAR members, property owners and all interested parties to educate homeowners on the benefits of energy efficiency and the opportunities that currently exist to make environmentally responsible choices and save money on their utility bills.

Sincerely,



William E. Brown

2017 President, National Association of REALTORS®