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August 19, 2016

Dr. Kathleen Hogan
Deputy Assistant Secretary for Energy Efficiency
Office of Energy Efficiency and Renewable Energy
U.S. Department of Energy
Forrestal Building
1000 Independence Avenue, SW
Washington, DC 20585

RE: Comments on the proposed "*Best Practice Guidelines for Residential PACE Financing Programs*"

Dear Dr. Hogan:

On behalf of the members of the National Association of REALTORS® I appreciate the opportunity to provide comments on the Department of Energy's (DOE) proposed revision of the "*Best Practice Guidelines for Residential PACE Financing Programs*" (The Guidelines).

The National Association of REALTORS® (NAR) is America's largest trade association, including our eight affiliated Institutes, Societies and Councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one of numerous state and local associations or boards of REALTORS® nationwide.

NAR has several general concerns related to Property Assessed Clean Energy (PACE) programs, including dangers to the mortgage financing system, property transaction concerns and consumer protection. NAR also has several specific concerns with The Guidelines, including the complexity of PACE programs, appraisal issues and the adequacy of proposed anti-fraud measures.

NAR's General Concerns with PACE

Mortgage Financing Concerns - Prior Federal Housing Administration (FHA) and U.S. Department of Veterans Affairs (VA) policy barred the financing or refinancing of a home unless the property was free and clear of any liens other than the FHA-insured or VA-guaranteed mortgage. Because PACE obligations are collected through property tax payments, they hold a senior lien position to an FHA or VA loan. Thus, prior FHA and VA policy was designed to ensure that obligations like a PACE "super lien" would not erode the value of the collateral in the event of foreclosure or the sale of the property.

Recent guidance issued for the FHA and by the VA now allows for the approval of mortgages for the purchase or refinance of properties with PACE obligations, provided they meet certain requirements. Among the requirements in the new guidance is that the outstanding PACE loan obligation does not take first lien position ahead of the FHA-insured or VA-guaranteed mortgage. However, the guidance does provide that delinquent PACE loan amounts will retain a first lien position. Allowing <u>any</u> PACE loan amount to hold a senior priority undermines the lender's (and the government's) collateral position and disrupts the secured lending process.

Consumer Protection Concerns - PACE loans are not typically accompanied by federal Consumer Financial Protection Bureau disclosures and protections associated with home mortgages, including the new Know Before You Owe disclosures or the Ability to Repay standards. This is because PACE financing has been classified as a tax assessment rather than a loan. However, a PACE loan is a financial obligation that can negatively affect one's ability to repay the mortgage. Borrowers may not fully understand the consequences of assuming an increased financial obligation on their tax bill. These borrowers also may not be able to effectively compare the cost of a PACE loan to that of more conventional financing—which typically is available at a significantly lower interest rate. Thus, the lack of adequate disclosures increases the risk of borrower delinquency, which could lead both FHA and VA to incur higher mortgage defaults and increased systemic risk.

Property Transaction Concerns – Because 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 approximately every nine years, and the average length of the PACE loan is 20 years, then the real estate professional will be responsible for explaining this special tax assessment an average of two to three times over the life of the loan.

Once the prospective buyer learns about this new cost to purchasing the home, this information may cause delays in the completion of the transaction or even a cancellation. The prospective buyer may ask questions about the special assessment, or may question the value of the home improvement financed by the PACE loan, which could have been done ten years prior and may have a limited lifespan.

In addition, there is already evidence that some subsequent purchasers of these homes will reject the assumption of a PACE payment obligation and insist that the seller extinguish the PACE financing before completing the purchase. This leaves the original borrowers with a closing table surprise, less sale proceeds than anticipated, or buyers who walk away from the purchase.

NAR's Specific Concerns with the Guidelines

PACE Program Complexity - NAR appreciates DOE's effort to develop a set of guidelines that help states design a PACE program that reduces home energy costs, is cost effective and protects consumers. However, one of NAR's concerns is the complexity of the program and the ability of property owners to fully understand the financial arrangement they are signing on to. For example, on page five of The Guidelines, a section entitled Property Owner Education and Disclosures includes a checklist of eight items that should be discussed with the potential PACE program participant. These items are complicated and include information on tax assessments, tax credits, interest rates and PACE billing issues. Again, NAR is concerned that an item may be left out or misconstrued and create problems down the line when the property is sold.

Appraisal Issues – NAR is concerned with the guidance provided on the valuation of PACE financed energy efficient features. The valuation of PACE- financed improvements is determined by comparing area home sales with the energy efficient features to homes without those features, and then finding a difference in value. In communities where there is simply a lack of this type of market information, it is very difficult for an appraiser to give a fair assessment of these features. While DOE has highlighted well-respected resources in *Section 6 Property Appraisals and Real Estate Transactions* of The Guidelines to aid in the understanding of PACE improvements, there is no single authoritative guidance on the appraisal of energy efficient improvements. NAR is concerned that in markets where PACE improvements are new or few in number, valuations will still have high levels of variation given the lack of clear standards on PACE financed improvements.

Quality Assurance and Anti-Fraud Measures - NAR appreciates the quality assurance and anti-fraud measures The Guidelines put in place to ensure the energy efficiency improvements actually do what they are supposed to do and consumers are protected. However, NAR is concerned about unscrupulous, fly-by-night contractors who may take advantage of unsophisticated homeowners and the lack of oversight, unclear enforcement authority and inadequate resources at the state and local level to properly enforce these guidelines.

Conclusion

NAR supports responsible efforts to provide homeowners with affordable and accessible financing for energy efficient home improvements. As The Guidelines are developed and refined, NA urges the DOE to find a dedicated funding source that states can tap into to help them enforce these guidelines and protect consumers.

The NAR appreciates the opportunity to comment on the PACE loan programs and supports providing property owners with the education, incentives and resources they need to improve their homes and save energy.
Sincerely,

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Tom Salomone
2016 President, National Association of REALTORS®