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May 7, 2019

The Honorable Kathleen L. Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: 12 CFR Part 1026 – Comments on Advanced Notice of Proposed Rulemaking re: Rulemaking on Residential Property Assessed Clean Energy Financing; RIN 3170-AA84

Dear Director Kraninger:

On behalf of the 1.3 million members of the National Association of REALTORS® (NAR), thank you for providing the opportunity to comment on the Advanced Notice of Proposed Rulemaking (ANPR) on Residential Property Assessed Clean Energy (PACE) Financing. The ANPR is being conducted by the Consumer Financial Protection Bureau (CFPB) under statutory authority of the Economic Growth, Regulatory Relief, and Consumer Protection Act, signed into law in May 2018. This law directed the CFPB to prescribe certain regulations for PACE financing requiring more disclosure and transparency about PACE financing, thereby enhancing consumer protections.

We appreciate the CFPB's thorough review of PACE programs and look forward to working with the Bureau to ensure PACE programs continue to protect consumers and encourage the creation of innovative mechanisms for owners to improve the energy efficiency of their homes. While we believe that energy-efficient home improvements can be beneficial, we also believe these programs have risks that could negatively impact mortgage finance markets and consumers.

Property Assessed Clean Energy Programs

Property Assessed Clean Energy (PACE) programs provide a mechanism for financing energy-related home improvement projects, such as solar panels or energy efficient windows. Although approaches vary, the general model is that 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.

More than 25 states have authorized local governments to establish PACE-type programs. The Federal Housing Finance Agency (FHFA) reviewed these various programs in 2009 and 2010. In a significant action, on July 6, 2010, the FHFA issued a statement that, in part, states:



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*“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, may alter valuations for mortgaged-backed securities and are not essential for successful programs to spur energy conservation.**” (Emphasis added)*

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

To summarize our comments, NAR is pleased that the CFPB is taking consumer protections seriously. The Bureau should strive to ensure that residential PACE lending programs are subject to the Truth in Lending Act (TILA) of similar residential loan products.

- There must be a proper underwriting process that includes, clear disclosures, “ability-to-repay” regulations and TILA-RESPA integrated closure (TRID) rules.
- Debt-to-income ratio should not exceed what is currently required for a traditional loan, as PACE financing established a super-priority lien over the entire property;
- Any type of PACE financing, regardless of name or marketing, should be covered by Bureau regulations.

NAR Concerns

Credit and Mortgage Availability

NAR is concerned that PACE financing could have an adverse impact on credit and mortgage availability. In most cases, PACE liens take priority over the underlying mortgage. 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 results in making mortgages more risky and costly.

Disclosure and Transactional Complexity

REALTORS® have concerns related to disclosure of property issues. The more items that are required to be disclosed, the more liability there is for failure to adhere to proper disclosure procedures, such as inadequate explanation of details. Because PACE liens run 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, but is not necessarily an issue that is disclosed to the real estate professional engaged in the sale of the property. The PACE lien, 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 lien, thereby injecting an element of uncertainty into the transaction. Thus, the overall confusion of how PACE liens impact property is confusing for homeowners selling their residences regarding what must be conveyed to the real estate professional/potential buyer and also on the buyer side in understanding the benefits.

Completion of the Transaction

Because these PACE liens 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 to seven years, and the average length of the PACE financing is 20 years, then a REALTOR® will be responsible for explaining this special tax assessment several times over the life of the loan. This information, if not explained accurately, 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 financing. 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 improper maintenance.

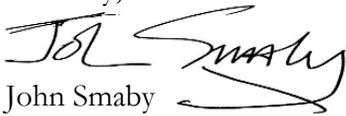
Conclusion

Thank you for allowing NAR the opportunity to comment on the CFPB's ANPR on improving consumer protections in the PACE financing process. It should be noted that viable alternatives to PACE financing exist that do not interfere with established lien priority protocols and include consumer protections. These efforts include educating property owners about cost effective ways to save energy, special financing through Fannie Mae and Freddie Mac, and incentives, such as tax credits, that they need to improve their homes and save energy.

NAR appreciates the emphasis on the voluntary nature of PACE first-lien programs, but believes the safety and soundness of the housing and mortgage finance marketplace must take precedence.

We hope the information provided will enable the CFPB to better understand the market and unique nature of PACE financing and formulate proposed regulations that achieve statutory objectives and also reflect a careful consideration of costs and benefits to consumers and the broader mortgage market.

Sincerely,



John Smaby
2019 President, National Association of REALTORS®