NAR Issue Summaries

Conventional Residential Lending / Property Assessed Clean Energy (PACE) Financing

NAR Committee:

Conventional Financing and Policy Committee

What is the fundamental issue?

Property Assessed Clean Energy (PACE) programs provide a mechanism for financing energy-related home improvement projects, such as solar panels or energy efficient windows. PACE programs permit local governments to provide financing to property owners for these projects; homeowners repay the amount borrowed over a period of years through an assessment added to their property tax bill.

I am a real estate professional. What does this mean for my business?

Credit and Mortgage Availability
NAR is concerned that PACE loans could have an adverse impact on credit and mortgage availability. Like property taxes, PACE liens take priority over mortgages. 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.

Disclosure Concerns
Real estate professionals are very concerned about issues that are required to be disclosed about a property. The more items that are required to be disclosed, the more liability is increased if an item is not disclosed. Because PACE loan liens run with the property and are included in the tax bill regardless of whom the property owner is, this is an item that would need to be disclosed to a potential buyer of the property.

Concerns Related to the Completion of the Transaction
Because PACE loans run with the property and not with the property owner, tax assessment for the loan will need to be explained for each new buyer. If it is assumed that the average home is sold every five years, and the average length of the PACE loan is 20 years, then this special tax assessment will need to be explained an average of four times over the life of the loan. These assessments have already caused delays in transactions or even cancellations.

Concerns Related to Consumer Protections
Because PACE loans start as a loan but are paid as a property tax, consumes may not fully understand the terms of the loan and how it will be paid back. In addition, contractors may conduct shoddy work, reducing the functionality of the energy efficiency improvements. Recent media reports have described how unscrupulous lenders and contractor have taken advantage of unwary homeowners and caused financial difficulties.

NAR Policy:

NAR believes that PACE liens should be subordinate to any first mortgages and supports Fannie Mae and Freddie Mac prohibitions against the purchase of mortgages or notes with PACE-type “super liens.” This will allow homebuyers to continue to easily obtain financing while supporting energy efficiency, and ensure mortgage markets remain secure.

Opposition Arguments:

Homeowners should have a variety of options to help them make their homes more energy efficient and save money on their utility bills. PACE programs help homeowners achieve both of those goals and also reduce CO2 emissions which contributes to climate change.

Legislative/Regulatory Status/Outlook

On July 6, 2010, the Federal Housing Finance Agency (FHFA) issued a statement that states:

“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, tempered demand for these programs.

In July, 2016, the Federal Housing Administration (FHA) and the Department of Veterans Affairs (VA) jointly issued guidance that allows for the approval of mortgage and refinance applications for properties with PACE obligations, provided they meet certain requirements. This means that borrowers may now use FHA and VA financing to purchase homes with PACE loans attached. NAR, along with other interested stakeholders, submitted comments outlining our concerns with the guidance and with PACE programs in general.

FHA withdrew this policy in October, 2017.

In May, 2018, Congress passed S. 2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act. This bill included provisions to make PACE loans more accountable by giving the Bureau of Consumer Financial Protection the authority to regulate PACE lenders and require them to corroborate a homeowners’ ability to repay loans that are levied as tax assessments on their homes. While energy efficiency upgrades are positive home improvements, these loans are not required to conform to ability-to-repay standards or certain consumer home mortgage disclosures, and as a result, some borrowers may enter into contracts without fully understanding the impact on the future resale of their property.

In March 2018, the Consumer Financial Protection Bureau (CFPB) published an Advanced Notice of Proposed Rulemaking (ANPR) to implement the provisions of S. 2155. NAR sumbitted comments in support of this proposed rule.

In March of 2020 NAR submitted comments to the Federal Housing Finance Agency's Request for Information seeking input on potential changes to PACE programs. NAR, in coordination with several other banking and real estate organizations, reiterated our concerns about the efficacy of these programs.

In 2021, NAR met with the Director of the FHFA to encourge the agency to move forward with the regulatory proposal to protect consumers from predatory PACE lenders. NAR plans to hold similar meetings in 2022 to reiterate this message.

In May 2023, the CFPB released a proposed rule implementing the provisions of S. 2155,Section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) which directs the CFPB to create regulations that protect consumers from fraudulent PACE loans and financing. NAR submitted comments supporting these consumer protections.

At this time, these regulations have not been finalized.

Current Legislation/Regulation (bill number or regulation)

None at this time.

Legislative Contact(s):

Russell Riggs, rriggs@nar.realtor, 202-383-1259

Regulatory Contact(s):

Russell Riggs, rriggs@nar.realtor, 202-383-1259