

March 16, 2020

Alfred M. Pollard, General Counsel,
Federal Housing Finance Agency
400 Seventh Street SW
Washington, DC 20219

Via fhfa.gov

Re: PACE Request for Input, Notice No. 2020–N–1

Dear Mr. Pollard,

Thank you for the opportunity to comment on the Federal Housing Finance Agency's (FHFA) PACE Request for Input (RFI). We appreciate the agency's interest in the developing PACE market and the increased risk it is creating for consumers, mortgage investors, and the market. However, the proposals suggested by FHFA's RFI would place additional burdens on homeowners without addressing the underlying consumer protection issues presented by PACE loans. We urge FHFA to instead promote more vigorous consumer protections regarding PACE lending.

FHFA should not direct the Enterprises to decrease loan-to-value (LTV) ratios in states or communities where PACE loans are available. By penalizing all consumers within a state, the vast majority of whom may never have a PACE loan, this policy would particularly undermine credit access in low-income communities and communities of color. We urge FHFA to reject this LTV proposal and instead take other, more effective steps to limit the impact of PACE loans on the Enterprises, as discussed in these comments. If FHFA nevertheless adopts an LTV reduction proposal, it should create an exemption from the policy for the Enterprises' programs and lending products that are designed to help low-income and very low-income borrowers, such as Fannie's HomeReady, HFA Preferred, and Community Seconds programs.

FHFA also should not direct the Enterprises to increase their Loan Level Price Adjustments (LLPAs), nor should it modify purchase requirements or establish special safety and soundness standards for PACE jurisdictions. Increasing LLPAs and guarantee fees that are paid by lenders when a loan is acquired by an Enterprise directly affects loan affordability, as the fees are passed on to borrowers. LLPAs disproportionately harm first-time homebuyers and those that cannot afford large down payments. Any increase in LLPAs in communities with available PACE financing will place an additional burden on many consumers who will never have a PACE loan, further inhibiting home purchase and refinancing opportunities. Moreover, FHFA should not modify Enterprise purchase requirements in jurisdictions with PACE programs, particularly since such changes would be most likely to adversely affect access to credit for low-income and very low-income borrowers. For similar reasons, it also should not establish special safety and soundness standards for the Federal Home Loan Banks' acceptance as collateral of mortgage loans in jurisdictions where PACE loans are available. Other government agencies, including FHA, also should not adopt similar measures

because they would impede access to credit without addressing the underlying consumer protection problems with PACE lending.

FHFA should enhance the Enterprises' servicing requirements to provide greater protections to consumers and the Enterprises. Specifically, the Enterprises' servicing requirements should direct servicers in jurisdictions where PACE loans are available to take proactive steps to determine whether a property is subject to a PACE lien, including flagging and promptly investigating the reason for an unusually large increase in a mortgage borrower's escrowed property tax bill; comparing the current property tax bill to bills from prior years when a mortgage borrower has defaulted on property taxes; and monitoring any real-time registry or database of PACE loans. In addition, the Enterprises should require that servicers of Enterprise mortgages in jurisdictions where PACE loans are available have protocols in place to reduce the likelihood of mortgage defaults resulting from PACE assessments.

PACE program administrators or local government sponsors should be required to notify servicers of new PACE loans directly or through a registry. The FHFA and Enterprises should work with PACE program administrators to develop a portal or some direct line of communication for the parties to easily send and receive the required information. Privacy concerns can be addressed by having homeowners execute appropriate authorizations to release information. Homeowners are not well positioned to know who they should contact or what information should be provided. Alternatively, it may be possible for servicers of Enterprise mortgages to be notified about PACE loans, and acquire additional loan-level information, through a real-time registry. A registry should be established to prevent the sale of multiple PACE loans on the same property. The registry should include information that is contained in the Notice of Assessment or other similar document that is recorded under state law to confirm the tax lien

FHFA should not require or even suggest that servicers of Enterprise mortgages give notice to existing borrowers PACE liens are not permitted, nor should they be required to certify that they will not participate in PACE financing. Not only do Enterprise mortgages not clearly prohibit PACE loans, but a notice would place an unreasonable burden on homeowners, who inevitably will be unaware of the restriction. Further, any agreement by a homeowner to avoid PACE loans would assume the homeowner would be aware of the PACE loan lien priority when obtaining the loan, which is often not the case. In addition, a homeowner likely would face enforcement of such a commitment when seeking loss mitigation and thus the provision could be used selectively to deny assistance such as a loan modification. Thus, these measures would not serve the purpose of avoiding PACE liens on Enterprise loans but would undermine consumer protection.

We strongly support efforts to strengthen consumer protections on PACE loans and impose comprehensive state and federal regulation over PACE that would treat it as a mortgage product. We urge FHFA to avoid measures that would instead place additional burdens on homeowners, who are not well positioned to be the driving force to reform the PACE industry. Rather than impose punitive measures on consumers, we believe FHFA and Enterprises should use their authority and influence over the housing finance market to incentivize PACE lenders and state actors to enhance consumer protections and adopt policies that limit risk to the Enterprises. The FHFA and Enterprises should:

- encourage the Consumer Financial Protection Bureau and states to issue regulations and program requirements that strengthen consumer protections;
- encourage states to make PACE assessments have subordinate lien status (or undertake measures that would result in a similar outcome);
- work to obtain loss guarantees from states or municipalities; and
- create new consumer financing products for energy efficiency improvements, so that consumers will have viable alternatives to PACE.

Thank you for the opportunity to comment on PACE lending. We appreciate FHFA's interest in addressing market problems with PACE loans and urge the agency to ensure that any measures adopted promote consumer protection.

Sincerely,

American for Financial Reform Education Fund
CAARMA Consumer Advocates Against Reverse Mortgage Abuse
Center for Community Progress
Center for NYC Neighborhoods
Center for Responsible Lending
Consumer Action
Georgia Watch
Mountain State Justice
National Community Stabilization Trust
National Consumer Law Center (on behalf of its low-income clients)
New Jersey Citizen Action
Public Law Center