July 15, 2016

The Honorable Richard Cordray
Director, Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

RE: Property Assessed Clean Energy (PACE) Lending

Dear Director Cordray:

The Mortgage Bankers Association (MBA) appreciates the significant work the Consumer Financial Protection Bureau (CFPB) has undertaken in helping to ensure borrowers have an ability to repay their mortgages and are better able to navigate the mortgage process.

Considering your work, we wanted to call to your attention issues regarding residential Property Assessed Clean Energy (PACE) lending programs.

PACE loans are financing products utilized for energy retrofit equipment installations on real property—including solar panels, energy efficient appliances and windows, etc. States pass enabling legislation to trigger PACE program implementation, which causes existing PACE program specifics to vary by state/municipality. Private companies initiate these loans and approve contractors to make these energy improvements. Often improvements are funded from proceeds raised by the issuance of municipal bonds. Under existing PACE loan programs, PACE loan payments are added to a borrower's property tax bill and paid through property tax installments. Loan terms are typically for a period of 15 or 20 years and offer interest rates significantly higher than traditional mortgage rates. The PACE loan then runs with the property, not the borrower, creating an encumbrance upon resale.

Though MBA supports the use of financing programs to create energy efficient savings, there are several issues surrounding the PACE loan structure that may present risks for borrowers, first lienholders and mortgage guarantors that warrant Bureau attention and review. These concerns include:

1. **"Ability-to-Repay"**

   PACE financing is generally based on the tax capacity of the property, rather than on the borrower's ability to repay (income, other credit obligations, etc.). These loans also typically carry interest rates far higher than conventional mortgage loans—often ranging between six and eight percent—in a time when mortgage rates have reached the lowest levels in decades. Therefore, PACE qualifying criteria may allow borrowers to assume an obligation that significantly increases their property tax payments even if they are not financially equipped to pay, increasing their risk of default on their mortgage.

2. **"Know Before You Owe"**

PACE loans are not accompanied by the disclosures typically associated with real estate financing. This is because PACE financing is not technically classified as a "loan," but as a voluntary assessment. However, a PACE loan is still a financial obligation that can negatively affect the mortgage repayment ability of consumers. Homeowners 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.

3. **Lien Priority**

Given the repayment of PACE loans through the tax structure, delinquent PACE amounts may become senior in lien priority to prior recorded mortgages. This concern and others spurred the Federal Housing Finance Agency (FHFA) to establish policy prohibiting Fannie Mae and Freddie Mac from purchasing mortgages where the property has a PACE loan attached.[1] This issue has raised particular concern for many in our membership.[2]

In contrast with PACE, conventional financing options such as home equity lines of credit (HELOC) or second mortgages, are frequently more suitable for providing energy efficient home improvements. These options are generally more favorable for homeowners due to lower interest rates and CFPB standards of qualification intended to protect the consumer.

MBA greatly appreciates the efforts the CFPB has already put into enhancing consumer protections for borrowers looking to achieve homeownership. We also appreciate your efforts to ensure consumer access to financial markets and encourage you to continue to explore how a traditionally structured PACE loan may inhibit such access. Toward this end, MBA urges that the Bureau review the aforementioned aspects of PACE lending.

We welcome the opportunity to discuss this issue further with you or your staff. Should you have questions or wish to discuss our concerns, please contact Tamara King, Vice President of Residential Policy and Member Engagement, at (202) 557-2758 or TKing@mba.org.

Sincerely,

David H. Stevens, CMB
President and Chief Executive Officer

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[1] See Enterprise Underwriting Standards, 77 Fed. Reg. 36,086, (June 15, 2012) (proposed rule); Federal Housing Finance Agency, Statement of the Federal Housing Finance Agency on Certain Super-Priority Liens, Dec. 23, 2014, available at: http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-the-Federal-Housing-Finance-Agency-on-Certain-Super-Priority-Liens.aspx

[2] Despite FHFA's policy and substantial market reticence, in August 2015 the Department of Housing and Urban Development (HUD) announced anticipated guidelines for the creation of a future Federal Housing Administration (FHA) initiative supporting borrowers who seek to make energy efficient improvements to their homes. Specifically, HUD announced they would release a structure permitting FHA financing for properties with existing PACE loans. Accordingly, we are now under the impression that the release of these FHA guidelines is imminent.