Asian Real Estate Association of America (AREAA)

The National Association of REALTORS®

National Association of Real Estate Brokers (NAREB)

Real Estate Services Providers Council (RESPRO)

The Realty Alliance

July 20, 2017

The Honorable Benjamin S. Carson, Sr., M.D.
Secretary
U.S. Department of Housing and Urban Development
451 Seventh St., SW
Washington, DC 20410

Dear Secretary Carson:

The undersigned organizations are writing to express our concern over guidance issued by the Department of Housing and Urban Development (HUD) on Property Assessed Clean Energy (PACE) loans.

We request that HUD rescind Mortgagee Letter 2016-112, in order to reduce risk in mortgage markets and enhance consumer protections in energy efficiency programs.

Our organizations represent many facets of the real estate sector, including Asian-American real estate professionals, African-American real estate professionals, real estate settlement service providers, the country's largest real estate firms and REALTORS® who are involved in all aspects of the real estate industry.

Background

PACE provides financing for home improvement projects by allowing local governments to provide financing to property owners for the purchase of energy-related home-improvement projects, such as solar panels or energy efficient windows. Homeowners repay the amount borrowed, with interest, over time through an assessment added to 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 programs in 2009 and 2010. In a significant action, on July 6, 2010, the FHFA issued a statement that, in part, states:

"*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, chilled the demand for these programs.

Previous Federal Housing Administration (FHA) policy barred the financing or refinancing of a home with FHA financing unless the property was free of any liens other than the FHA-insured mortgage. Because PACE loans are collected as an assessment through property taxes, they are in a senior lien position to an FHA mortgage. Thus, prior FHA policy ensured that obligations like PACE would not be placed in a lien position before an FHA mortgage.

Without any public notice and comment opportunity, FHA issued ML 2016-11—which allows for FHA approval of mortgages for the purchase or refinance of properties with PACE loan obligations and contradicts long-standing FHA policy on FHA mortgage lien positions.

While we believe that energy-efficient home improvements can be beneficial, we also believe that these programs have risks that could impact mortgage finance markets. We believe that the current PACE financing structure, in combination with ML 2016-11, does not help resolve these problems.

What Are The Primary Concerns?

<u>Credit and Mortgage Availability</u>
We are concerned that PACE loans could have an adverse impact on credit and mortgage availability. In most cases, mortgages take priority over PACE liens. 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 devalues the mortgage. This has the effect of making mortgages more risky and costly.

<u>Disclosure and Transactional Complexity</u>
The real estate and associated industry sectors are very concerned about issues that are required to be disclosed about a property. The more items that are disclosed, the more the opportunity exists for an item to not be disclosed or not explained clearly.

Because PACE loans run with the property and are included in the tax bill regardless of the property owner, this item that would need to be disclosed to a potential buyer. The PACE loan, 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 loan, thereby injecting an element of uncertainty into the transaction. This process may cause delays in the completion of the transaction or even a cancellation.

<u>Tax Code Distortions</u>

Instead of paying the lenders directly like in a traditional loan, loans are repaid through a higher annual assessment on property tax bills. The loan is attached to the property itself, distorting the tax code for the payment of personal and private loan obligations. The IRS even permits the interest portion of local PACE property tax payments be deducted from personal income taxes, a benefit not always enjoyed by private loans that could achieve the same energy goals.

Consumer Fraud and Abuse

ML 2016-11 does not adequately address the significant consumer protection gaps presented by existing PACE programs. The patchwork of state and local consumer protection standards do not ensure homeowners are treated fairly and good information about these programs are developed and delivered in a consistent and timely manner.

There have been incidents of fraud and abuse, such as unscrupulous contractors taking advantage of elderly or low-income owners by not explaining clearly the nature of this kind of loan. In addition, they may do shoddy work and the financed improvement may not offer the promised energy or financial savings.

We believe that robust licensing and education requirements for those involved in PACE loan origination would reduce the number of bad actors in the PACE loan industry.

Conclusion

We urge HUD to rescind ML 2016-11, as well as support measures to strengthen a homeowners' ability to save energy and save money on their utility bill. These efforts include educating property owners about cost effective ways to save energy and incentives, such as tax credits, that they need to improve their homes and save energy. Alternatives to PACE loans already exist, which do not interfere with established lien priority protocols and include consumer protections.

The undersigned organizations appreciate the emphasis on the voluntary nature of PACE first-lien programs, but believe the safety and soundness of real estate mortgage markets must take precedence over other concerns regarding the housing and mortgage finance marketplace.

Sincerely,

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