Policy Statement on Residential Property Assessed Clean Energy (PACE) Lending

December 10, 2017

STATEMENT OF POLICY

The American Bankers Association supports responsible efforts to provide homeowners with affordable and accessible financing for energy efficient home improvements. Property Assessed Clean Energy (PACE) loans, as currently structured, and despite limited reforms imposed by some states, do not meet the appropriate standards for safety and soundness or consumer protection.

BACKGROUND

PACE programs as currently structured can increase mortgage default rates, increase the severity of losses to mortgage holders, and harm the foundations of mortgage securitization, which can jeopardize credit availability. In addition, PACE loans target consumers who would not be eligible for traditional, lower cost financing options. Despite some encouraging first-steps, including reforms enacted in California in 2017, there are still significant oversight and consumer protection concerns related to PACE products.

REGULATORS’ CONCERNS

Federal financial regulators have weighed-in on the risks of residential PACE financing programs. The Federal Housing Finance Agency (FHFA), which regulates Fannie Mae and Freddie Mac, has consistently stated that first-lien PACE programs transfer risk to mortgage holders, and, if ultimately purchased by the GSEs, to taxpayers. Consequently, the FHFA has prohibited Fannie Mae and Freddie Mac from purchasing or refinancing mortgages with PACE loans attached. The Office of the Comptroller of the Currency (OCC) also released supervisory guidance noting that PACE lien infringement raises significant safety and soundness concerns for banks and, just last week, the Department of Housing and Urban Development announced that it would no longer allow the Federal Housing Administration (FHA) to insure loans with PACE assessments. “FHA can no longer tolerate putting taxpayers at risk by allowing obligations like these to be placed ahead of the mortgage itself in the event of a default,” HUD Secretary Ben Carson said in the Agency’s press release announcing the policy change. “Assessments such as these are potentially dangerous for our Mutual Mortgage Insurance Fund and may have serious consequences on a consumer’s ability to repay, or when they attempt to refinance their mortgage or sell their home.”

STATE LEVEL ACTION

Several states have recognized the risks associated with Residential PACE products. Despite years of intense advocacy, only three states (California, Florida and Missouri) have active Residential PACE programs. Several of the states that have enacted Residential PACE enabling legislation (but do not have active programs) have revised their statutes to provide important protections for the mortgage market, including:

- Removing Priority Lien Status – True subordination, extinguished in foreclosure
- Requiring prior consent from existing lienholders
- Establishing a loss reserve fund for delinquent PACE payments
- Requiring escrow of PACE payments
CONSUMER PROTECTION CONCERNS REMAIN

There are better alternatives currently available for consumers to finance energy efficiency improvements. For homeowners with the means to finance an energy retrofit project without a PACE loan, the alternative financing likely would have a lower cost and much more flexibility, such as a shorter term and the ability to prepay the loan. This flexibility would also permit the homeowner to sell the property without diminishing the sales price to reflect the outstanding PACE loan. Those loan products, such as § 203(k) insured home improvement loans from the Federal Housing Administration, Energy Efficient Mortgages, and general home improvement loans are more suitable to achieve responsible energy financing. PACE loans are directed at those who cannot qualify for non-PACE financing, and who, in many cases, are not in a financial position to assume additional debt for energy efficiency projects – especially where those projects do not provide a neutral engineering assessment that demonstrates what the project will cost, what it will save, and when the savings will accrue.

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