



The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES

Committee:
House Ways & Means
Vice-Chairman

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July 21, 2016

Hon. Benjamin B. Downing, *Chairman*
State House, Room 413F
Boston, MA 02133

Hon. Brian S. Dempsey, *Chairman*
State House, Room 243
Boston, MA 02133

Hon. Marc R. Pacheco, *President Pro Tempore*
State House, Room 312B
Boston, MA 02133

Hon. Thomas A. Golden, Jr., *Chairman*
State House, Room 473B
Boston, MA 02133

Hon. Bruce E. Tarr, *Minority Leader*
State House, Room 308
Boston, MA 02133

Hon. Bradley H. Jones, Jr., *Minority Leader*
State House, Room 124
Boston, MA 02133

Re: H4385/S2400, *An Act to Promote Energy Diversity*

Dear Honorable Members of the Conference Committee:

I am writing to express my strong support for inclusion of residential and commercial Property Assessed Clean Energy (PACE) enabling legislation in the energy bill under consideration by the Conference Committee. I greatly appreciated the House's inclusion, by voice vote without objection, of my amendment to authorize residential and commercial PACE programs, and urge the Conference Committee to adopt the House's position.

As a part of its announcement of the Clean Energy Savings for All Americans Initiative, on July 19th, the President and his Administration delivered a full throated endorsement of PACE as a key tool to expand access to clean energy improvements. The Administration announced that the Federal Housing Administration (FHA) will now approve purchase and refinance mortgage applications in states that treat PACE obligations as special assessments similar to property taxes, which will help support PACE's adoption nationally. I have attached the FHA press release and mortgagee letter for reference.

Consistent with the FHA announcement, H.4385 classifies PACE as a betterment tax assessment. Under Massachusetts law and as recognized by the FHA, tax assessments receive a priority claim to proceeds

in a foreclosure. However, H.4385 requires the residential PACE betterment to be junior to preexisting real estate debt and junior to subsequent first mortgages. By doing so, H.4385 goes well beyond what FHA requires and protects the security interest of existing lienholders, including first mortgage holders as well as junior interests like second mortgages or home equity lines of credit. For mortgages not insured by FHA, the borrower may be required to pay off the PACE assessment as a part of the sale or refinance transaction consistent with the treatment of other existing real estate debt at sale, like a home equity line of credit or a second mortgage, which must also be paid off prior to transfer.

H.4385 strikes an important balance. It protects the security of preexisting lienholders within a framework that allows PACE to be successful. This balance recognizes that lienholder consent to the PACE betterment is unnecessary because consent to betterments is not required by the FHA or Massachusetts law and because the junior residential PACE betterment protects the security of preexisting lienholders. It further recognizes that consent would prevent residential PACE for taking hold in Massachusetts as consent would take weeks to secure while a key benefit of PACE is its availability to replace broken systems when time is of the essence.

H.4385 also lays the groundwork for the adoption of stringent consumer protections by requiring promulgation of guidelines for contractor participation, disclosures, and marketing practices. The bill further charges Mass Development with establishing underwriting standards and the Department of Energy Resources the technical standards for product eligibility.

Massachusetts has long been a leader in promoting cutting edge efforts to advance energy efficiency. Existing efficiency programs in the Commonwealth, like HEAT Loan, are highly successful but are neither structured nor used (according to surveys) to make financing available quickly when homeowners need to make an immediate repair or replacement of an existing system. PACE has proven highly effective at providing attractive financing to homeowners that makes more efficient improvements possible when time is of the essence and when most homeowners would otherwise be forced to pay out of pocket or utilize unsecured financing like a credit card or manufacturer financing. Home equity lines of credit (HELOC) provide another possible financing pathway, but unless the line is already open, the timeline to secure a HELOC is not conducive to a time sensitive need.

Faced with the options currently available, most homeowners select the least-efficient replacement option. With hundreds of thousands of Massachusetts homeowners replacing systems affecting energy and water use each year, the implications are significant. Residential PACE is an innovative financing tool that can be made available to replace broken systems when time is of the essence – addressing a consumer need which is not being met by conventional financing options or energy-efficiency loan products and complementing existing energy efficiency efforts.

PACE is a proven means to advance efficiency investment at the commercial and residential level – helping the Commonwealth satisfy its clean energy goals, cutting energy bills, and spurring local job growth. I respectfully urge inclusion of residential and commercial PACE enabling legislation in the energy bill.

Sincerely,



Stephen Kulik
State Representative
First Franklin District



HUD No. 16-110
Brian Sullivan
(202) 708-0685

FOR RELEASE
Tuesday
July 19, 2016

FHA TO INSURE MORTGAGES ON CERTAIN PROPERTIES WITH PACE ASSESSMENTS

New guidance intended to stimulate access to clean energy financing

WASHINGTON - In order to enable homeowners seeking clean energy technologies in their homes to leverage a range of financing options, the Federal Housing Administration (FHA) today announced guidance that makes clear the circumstances under which it will insure mortgages on properties that include Property Assessed Clean Energy (PACE) assessments. FHA will now approve purchase and refinance mortgage applications in states that treat PACE obligations as special assessments similar to property taxes. [Read more about FHA's new guidance.](#)

FHA's action is part of a larger Administration effort to expand access to clean energy technologies to every American family with the option to transition to solar energy and make improvements to their homes to cut their energy bills. [Read more.](#)

PACE is showing promise as an effective way to finance energy efficiency, renewable energy, water conservation, and other resilience upgrades to homes, including new heating and cooling systems, lighting improvements, solar panels, water pumps, and insulation. PACE pays the costs for such enhancements and is repaid through an assessment added to the property's tax bill. State and local governments sponsor PACE financing to encourage energy efficiency, solar energy deployment, advance resilience, create jobs, promote economic development, and protect the environment.

"Today, we're seizing the opportunity to shape a cleaner and more sustainable nation," said Ed Golding, HUD Principal Deputy Assistant Secretary for Housing. "Using PACE, families will be able to make their homes more energy efficient and sustainable in the long run, while still keeping their costs affordable today. As PACE programs continue to develop across the nation, the positive impact on families, jobs, and the environment will only grow."

FHA's new guidance addresses PACE programs where the PACE obligation is treated like a property tax and does not allow the full obligation to have priority or 'prime' status over the FHA mortgage lien. By law, FHA cannot accept a first lien PACE structure (except for past due amounts as is the case for all tax assessments). In accordance with existing guidance, lenders will be responsible for escrowing PACE payments as they would property taxes. In addition, purchasers of homes with existing PACE obligations will be responsible for any unpaid balance of the obligation.

The guidance protects FHA from risk in a variety of ways. Lenders must escrow payments for PACE assessment so FHA should never be at risk of losing collateral in a tax sale. FHA is also

protected as its appraisal policy requires that appraisals take into account the PACE assessment and the value of the improvements.

The Department of Energy is updating its Best Practices Guidelines for Residential PACE Financing, which may be used by states and counties to align with their consumer protection goals.

To qualify for FHA insurance on mortgages for properties that include PACE assessments, lenders must determine that the following requirements have been met under the laws in the state where the property is located:

- The PACE obligation must be collected (escrowed) and secured by the creditor in the same manner as a special assessment against the property.
- The PACE obligation cannot accelerate - namely, the entire amount of the obligation cannot become due in the event of delinquency after endorsement of the FHA-insured mortgage. The property may be subject to an enforceable claim or lien that is superior to the FHA-insured mortgage but only for the delinquent portion of the PACE obligation.
- There are no terms or conditions that limit the transfer of the property to a new homeowner.
- The existence of a PACE obligation on a property is readily apparent to mortgagees, appraisers, borrowers and other parties to an FHA-insured mortgage transaction, and information on PACE obligations must be readily available for review in the public records where the property is located.
- In the event of the sale, including a foreclosure sale, of the property with outstanding PACE financing, the PACE assessment remains with the property. In cases of foreclosure, priority collection of delinquent payments for the PACE assessment may be waived or relinquished. Unless a payoff is negotiated, the buyer will assume the obligation and will be responsible for the payments on the outstanding PACE amount.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

July 19, 2016

Mortgagee Letter 2016-11

To

All FHA Approved Mortgagees
All Direct Endorsement Underwriters
All FHA Roster Appraisers
All FHA Roster Inspectors
All FHA Approved 203(k) Consultants
All HUD Approved Housing Counselors
All HUD Approved Nonprofit Organizations
All Governmental Entity Participants
All Real Estate Brokers
All Closing Agents

Subject

Property Assessed Clean Energy (PACE)

Purpose

This transmits updates to the following sections of HUD Handbook 4000.1, *Single Family Policy Handbook*:

- Section II.A.1.a.i(E)(1)(a)(iii), Sales Contract and Supporting Documentation
 - Section II.A.1.a.iii(B)(6)(e), Additional Requirements When Ordering an Appraisal
 - Section II.A.1.b.iv(A)(6), Property Assessed Clean Energy (PACE)
 - Section II.A.4.a.iii(A)(1), Automated Underwriting System Data Entry Requirements
 - Section II.A.4.d.iii(G)(2), Interested Party Contributions (TOTAL)
 - Section II.A.5.c.iii(G)(2), Interested Party Contributions (Manual)
 - Section II.A.5.d.vii(B), Calculating Total Mortgage Payment
 - Section II.A.6.a.viii(A), Monthly Escrow Obligation
 - Section IID.12.d.iv, Property Assessed Clean Energy (PACE)
-

Mortgagee Letter 2016-11, Continued

Effective Date These Handbook sections are effective for all case numbers assigned on or after 60 days from publication of this Mortgagee Letter; however, Mortgagees may begin using the policy immediately.

4000.1 FHA Single Family Housing Policy Handbook The attached updates to HUD's Single Family Housing Policy Handbook 4000.1 will be incorporated in a future publication of the Handbook.

Background FHA supports the goals of clean energy, energy efficiency, and resilience. Property Assessed Clean Energy (PACE) programs may provide an alternative means of financing energy and other PACE-allowed improvements to residential properties using financing provided by private enterprises in conjunction with state and local governments.

The terms and conditions of the PACE obligation may vary by state, local government, and PACE program. PACE programs also determine the scope of allowable improvements made under their respective PACE programs. Generally, the repayment of the PACE obligation is collected in the same manner as a special assessment is collected by the local government, rather than paid directly by the Borrower to the party providing the PACE financing. Generally, the PACE obligation is also secured in the same manner as a special assessment against the property. In the event of the sale, including a foreclosure sale, of the property with outstanding PACE financing, the obligation will continue with the property causing the new homeowner to be responsible for the payments on the outstanding PACE amount. In cases of foreclosure, priority collection of delinquent payments for the PACE assessment may be waived or relinquished.

The Department of Energy is updating its Best Practices Guidelines for Residential PACE Financing, which may be used by states and counties to align with their consumer protection goals.

FHA regulations at 24 CFR §203.32(a) require, in part, that with certain exceptions, at the time the mortgage is offered for insurance, the property must be free and clear of any liens other than the FHA-insured mortgage. In addition, FHA regulations at 24 CFR §203.41(c)(2) require that any restrictions on conveyance automatically terminate if title to the mortgaged property is transferred by foreclosure or deed-in-lieu of foreclosure, or if the FHA-insured mortgage is assigned to the Secretary.

Continued on next page

Mortgagee Letter 2016-11, Continued

Attached to this ML are additions and revisions to the Handbook 4000.1. The following is a summary of Title II Forward Mortgage policy changes, which is provided for informational purposes only.

Outstanding PACE Obligations

Properties which will remain encumbered with a PACE obligation may be eligible for FHA-insured mortgage financing, provided that the mortgagee determines that the following requirements have been met:

- under the laws of the state where the property is located, the PACE obligation is collected and secured by the creditor in the same manner as a special assessment against the property;
- the property may only become subject to an enforceable claim (i.e., a lien) that is superior to the FHA-insured mortgage for delinquent regularly scheduled PACE special assessment payments. The property shall not be subject to an enforceable claim (i.e., lien) superior to the FHA-insured mortgage for the full outstanding PACE obligation at any time (i.e., through acceleration of the full obligation.) However, a notice of lien for the full PACE obligation may be recorded in the land records;
- there are no terms or conditions that limit the transfer of the property to a new homeowner. Legal restrictions on conveyance arising from a PACE obligation that could require the consent of a third party before the owner can convey the real property are prohibited, unless such provisions may be terminated at the option of, and with no cost to, the homeowner;
- the existence of a PACE obligation on a property is readily apparent to mortgagees, appraisers, borrowers and other parties to an FHA-insured mortgage transaction in the public records and must show the obligation amount, the expiration date and cause of the expiration of the assessment, and in no case may default accelerate the expiration date; and
- in the event of the sale, including a foreclosure sale, of the property with outstanding PACE financing, the obligation will continue with the property causing the new homeowner to be responsible for the payments on the outstanding PACE amount.

Disclosure of PACE Obligation, Terms and Conditions upon Sale

For properties with existing PACE obligations, the property sales contract must indicate whether the obligation will remain with the property or be satisfied by the seller at, or prior to closing. Where the obligation will

Continued on next page

Mortgagee Letter 2016-11, Continued

(continued) remain, all terms and conditions of the PACE obligation must be fully disclosed to the borrower and made part of the sales contract between the seller and the borrower.

Appraisal Requirements

Where energy and other PACE-allowed improvements have been made to the property through a PACE program, and the PACE obligation will remain outstanding, the appraiser must analyze and report the impact on the value of the property, whether positive or negative, of the PACE -related improvements and any additional obligation (i.e., the PACE special assessment).

Home Equity Conversion Mortgages And Title I Loans

These policies are not applicable to Home Equity Conversion Mortgages (HECM) or Title I Loans. Properties with PACE obligations are not eligible for an FHA-insured HECM or Title I Loan.

Information Collection

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0059 and OMB Control number 2502-0538. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Questions

Please address any questions about the topics addressed in this Mortgagee Letter to the FHA Resource Center at (800) 225-5342. Persons with hearing or speech impairments may reach this number via TTY by calling the Federal Relay Service at (800) 877-8339. For additional information on this Mortgagee Letter, please visit www.hud.gov/answers.

Signature

Edward L. Golding
Principal Deputy Assistant Secretary for Housing

Attachments

[1](#), [2](#), [3](#), [4](#), [5](#), [6](#), [7](#), [8](#), [9](#), [10](#)

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