OCC 2010-25

OCC BULLETIN

Comptroller of the Currency
Administrator of National Banks

Subject: **Property Assessed Clean Energy (PACE) Programs** Description: **Supervisory Guidance**

Date: July 6, 2010

TO: Chief Executive Officers of All National Banks, Department and Division Heads, and All Examining Personnel

The Office of the Comptroller of the Currency (OCC) is issuing this guidance to alert national banks to concerns and regulatory expectations regarding certain state and local lending programs for energy retrofitting of residential and commercial properties, frequently termed a Property Assessed Clean Energy (PACE) program. PACE or PACE-like (PACE) programs use the municipal tax assessment process to ensure repayment. Under most of these programs, such loans acquire priority lien, thereby moving the funds advanced for energy improvements ahead of existing first and subordinate mortgage liens.[1] This lien infringement raises significant safety and soundness concerns that mortgage lenders and investors must consider. Reflecting these concerns, the Federal Housing Finance Agency (FHFA) today issued the attached statement directing actions that Fannie Mae, Freddie Mac, and the Federal Home Loan Banks should undertake to protect their operations with regards to such programs.

National banks need to be aware of the FHFA's directives for loans that they may originate with the intent to sell to the government sponsored entities. More generally, national banks should ascertain if such programs exist in jurisdictions where they do business, determine whether those programs alter banks' lien positions, and carefully consider the programs' impact on both banks' current mortgage portfolios and ongoing mortgage lending activities.

National bank lenders should take steps to mitigate exposures and protect collateral positions. For existing mortgage and home equity loans, actions may include the following in accordance with applicable law:

- Procuring loss guarantees from the respective states or municipalities;
- Escrowing tax assessment-related debt service payments;
- Re-evaluating and adjusting home equity line of credit (HELOC) line amounts; and
- In the case of commercial properties, securing additional collateral.

For new mortgage and home equity loans, mitigating steps may include:

- Reducing real estate loan-to-value limits to reflect maximum advance rates of PACE programs to the extent they create super-senior lien priorities; and
- Considering the maximum amount of the PACE payment portion of the annual tax assessment in the institution's analysis of the borrower's financial capacity.

In addition, banks that invest in mortgage backed securities or that are considering the purchase of pools of mortgage loans should consider the impact of tax-assessed energy advances on their asset valuations. Finally, the OCC expects investment banking units to be cognizant of the impact of this type of funding vehicle on their respective institutions and on the mortgage market overall when making any decisions regarding associated bond underwriting.

The OCC supports commercial and residential energy lending when such lending programs observe existing lien preference, ensure prudent underwriting, and comply with appropriate consumer protections. Programs that fail to comply with these expectations pose significant regulatory and safety and soundness concerns.

For questions or further information, please contact Joseph A.Smith, Group Leader, Retail Credit Division at (202) 874-5170.

/signed/
Timothy W. Long
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Attachment: FHFA Statement
[http://www.fhfa.gov/webfiles/15884/PACESTMT7610.pdf]

[1] Some states have chosen not to adopt such priority positions for their loans.

For instructions on how to view attachments, visit the Accessibility page.