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March 16, 2020

Hon. Mark A. Calabria, Ph.D.
Director
Federal Housing Finance Agency, Eighth Floor
400 Seventh Street, SW
Washington, DC 20219

Re: PACE Request for Input, Notice No. 2020-N-1

Dear Director Calabria:

Ygrene Energy Fund, Inc. ("Ygrene") submits this letter in response to the Federal Housing Finance Agency's ("FHFA") Notice and Request for Input entitled "Property Assessed Clean Energy (PACE) Program" (the "RFI") published in the Federal Register on January 16, 2020. The RFI seeks input on potential policy changes to its regulated entities – the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively, the "Enterprises"), and the Federal Home Loan Banks ("FHLBs") – related to senior lien residential PACE programs. Thank you for the opportunity to provide the following comments.

Ygrene understands that the FHFA and the Enterprises have concerns about PACE that have been articulated in this RFI as well as in prior statements and policies on the topic. Based upon Ygrene's analysis of these concerns and our prior experiences, it is clear that fundamental misconceptions about the program, applicable laws, and regulations and a lack of data-driven analysis persist. Furthermore, many of the statements and questions contained in the RFI fail to make a most important connection: PACE finances improvements that mitigate arguably the greatest risk to the safety and soundness of the Enterprises. Simply put, the bigger picture is the risk of catastrophic loss to the Enterprises due to the impacts of climate change and natural disasters on its mortgage collateral.

PACE was created to serve a policy objective that many states and local communities have since enshrined in law: improving energy efficiency, increasing renewable energy generation, and mitigating the dire effects on all types of properties from hurricanes, flooding, wildfires, and seismic activity. It is widely recognized that improving the built environment (existing homes, buildings, and other facilities), as opposed to improving just new construction and government owned property, is essential. Yet, for many residential homeowners, the upfront cost of installing the most effective improvements, not just the cheapest ones, is cost prohibitive. This is precisely the problem that PACE solves for – providing the upfront financing sufficient to pay for improvements that will have the greatest impacts on the home, the community, and the

planet. By doing so PACE programs not only provide the necessary capital but do so at a cost far lower, and with far longer terms, than most alternatives. The result is expanded access for many more homeowners and a scaled solution for policymakers that fulfills the stated objectives to the greatest extent possible.

Ygrene was founded with a simple mission: to provide access to safe and affordable PACE financing for property owners in order to protect and improve homes and communities and to improve the environment. Ygrene has delivered on its mission having helped tens of thousands of property owners make their homes and businesses safer, more resilient, more energy efficient, and more valuable all while benefiting the environment and creating tens of thousands of local jobs.

The RFI poses nine questions that ask whether and how the FHFA should take further measures to protect the mortgage asset portfolios of the Enterprises. These proposed measures appear to rest on the perception that PACE financing has an "adverse impact" on the Enterprises' portfolios.[1] We respectfully disagree. As detailed in this letter, a data-driven, cost-benefit analysis of PACE financing in the context of the FHFA's mission as conservator of the Enterprises counsels against implementing the policies the FHFA is considering in the RFI. From a timing perspective, the RFI presents a feasible and realistic opportunity to further study these and other considerations. The FHFA will find in Ygrene a capable and willing partner in the effort to further study climate resilience in the residential home market and its impacts on the Enterprises.

The policies the FHFA is considering, if implemented, would not only negatively impact options for responsible homeowners to access affordable and safe financing for critical property upgrades, but the proposed policies would also negatively impact the broader national housing market. The proposed policies would result in substantial hardship to homeowners and the economic loss suffered by states with senior lien residential PACE programs, as well as the nation more broadly. And, the proposed policies would seem to conflict with the votes taken by duly elected legislators and local officials, under the auspices of their respective state constitutions, and with the will of the people in these states where PACE laws have been enacted.

The residential PACE industry has been in existence since 2008 and has financed more than 280,000 residential property improvement projects and contributed more than $6 billion to disaster resiliency, renewable energy, and energy and water efficiency investments in the built environment. During that time, no data or evidence has been shown indicating an identifiable or quantifiable risk to the Enterprises or the FHLBs as a result of either a) the mere availability of senior lien PACE in a particular state or community, or b) the utilization of PACE by properties already in the portfolio. In fact, all available data and research shows that PACE-financed home improvement projects actually support the FHFA's mission (1) to ensure that the Enterprises and the FHLBs system are operating in a safe and sound manner and (2) to support a strong, sustainable, and resilient national housing market. All available evidence, data, and research

[1]FHFA RFI p. 2738.

actually demonstrates that PACE-financed improvement projects reduce financial risks to the Enterprises by increasing the value and resiliency of the Enterprises' underlying mortgage collateral.

Ygrene strongly recommends the FHFA refrain from implementing the policies described in the RFI. In broadly addressing the nine questions included in the RFI, this letter demonstrates the following:

- PACE, as established and declared by state statute, serves the public interest and provides public benefits;
- PACE has sound underwriting standards and comprehensive consumer protections, which reduces risk to the Enterprises;
- PACE improvements increase the value of homes and therefore increase the value of the Enterprises' underlying collateral while reducing the risk of portfolio losses in the event of foreclosure;
- PACE reduces the risk of catastrophic loss to the Enterprises' underlying collateral as a result of natural disasters thereby reducing the risk of losses to the Enterprises' portfolios;
- PACE substantially reduces the operating costs of homes through utility and insurance premium cost savings thereby decreasing the risk of mortgage delinquency and default;
- PACE-improved properties have lower property tax delinquency rates than properties without PACE thereby reducing the risk of tax foreclosure and subsequent losses to the Enterprises' portfolios;
- California created a PACE Loss Reserve Program to protect mortgage holders from any losses as a direct result of PACE and that reserve has never been tapped;
- Quantifying the net impact of Ygrene PACE financing demonstrates the benefit PACE improvements have on the Enterprises' portfolios; and
- FHFA policy toward PACE is inconsistent with its policy toward all other property taxes and special assessments.

Thus, based on the data, research, and evidence presented in the sections below, the policies the FHFA is considering in the RFI are unwarranted and unjustified.

PACE, as established and declared by state statute, serves the public interest and provides public benefits

PACE public policy was established by state statute to address some of the most challenging environmental and resiliency issues facing communities across the country. In fact, the very statutory foundation upon which PACE programs rest is to serve the interests of the public. For example, in 2008 when establishing the first PACE enabling legislature in the country, the California Legislature declared in Assembly Bill 811 as follows:

1. Energy conservation efforts, including the promotion of energy efficiency improvements to residential, commercial, industrial, or other real property, are necessary to address the issue of global climate change.
2. The upfront cost of making residential, commercial, industrial, or other real property more energy efficient prevents many property owners from making those improvements. To make those improvements more affordable and to promote the installation of those improvements, it is necessary to authorize an alternative procedure for authorizing assessments to finance the cost of energy efficiency improvements.
3. The Legislature declares that a public purpose will be served by a contractual assessment program that provides the legislative body of any city with the authority to finance the installation of distributed generation renewable energy sources and energy efficiency improvements that are permanently fixed to residential, commercial, industrial, or other real property.[2]

Similarly, in 2010 when passing House Bill 7179, Florida's PACE enabling legislation, the Florida Legislature declared as follows:

> The Legislature finds that all energy-consuming-improved properties that are not using energy conservation strategies contribute to the burden affecting all improved property resulting from fossil fuel energy production. Improved property that has been retrofitted with energy-related qualifying improvements receives the special benefit of alleviating the property's burden from energy consumption. All improved properties not protected from wind damage by wind resistance qualifying improvements contribute to the burden affecting all improved property resulting from potential wind damage. Improved property that has been retrofitted with wind resistance qualifying improvements receives the special benefit of reducing the property's burden from potential wind damage. Further, the installation and operation of qualifying improvements not only benefit the affected properties for which the improvements are made, but also assist in fulfilling the goals of the state's energy and hurricane mitigation policies. In order to make qualifying improvements more affordable and assist property owners who wish to undertake such improvements, the Legislature finds that there is a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance.[3]

PACE programs, as established by state statute and enabled by local governments, serve the public interest by not only improving the properties for which individual PACE improvements are installed, but also, like other property taxes and assessments, by providing substantial public benefit and contributing to the environmental and resiliency goals of those jurisdictions. PACE programs are the result of states exercising their authority to enact policies that contribute to the well-being of their citizens and the communities in which they live. And,

[2] California Streets and Highways Code § 5898.14
[3] Florida Statute § 163.08

the policies the FHFA is considering in this RFI would hinder the ability of states to pursue and implement those policies.

Responses to questions 1-4

Questions 1-4 in the RFI inquire about policy changes to mortgage underwriting standards based on the perception that the availability PACE financing and the existence of PACE liens on properties in the Enterprises' portfolio poses a systemic risk to the Enterprises' underlying assets and portfolio. There is no evidence or data indicating any identifiable or quantifiable risk to the Enterprises' portfolio as a result of either a) the availability of senior lien residential PACE in a particular state or jurisdiction, or b) the existence of residential PACE liens on assets already in the Enterprises' portfolio.

Contrastingly, there is ample data indicating that the implementation of policies such as decreasing mortgage loan-to-value ratios for all new loan purchases, increasing Loan Level Price Adjustments (LLPAs) or other credit enhancements for all mortgage loans, and/or requiring additional safety and soundness standards in states or communities where senior lien PACE is merely available would harm all potential mortgage borrowers not just those who have utilized PACE financing. Specifically, the proposed changes would undoubtably harm the national mortgage market, prevent many Americans from purchasing a home, and impact the broader economy.

The following sections demonstrate why the FHFA's consideration of the policies is unwarranted and why, in fact, the availability and utilization of PACE actually improves the Enterprises' underlying assets and portfolios.

PACE has sound underwriting standards and comprehensive consumer protections, which reduces risk to the Enterprises

PACE is a public, policy-based program enabled by state statute and implemented through private-public partnerships approved by over 700 local governments across the country. From inception, PACE has operated with government oversight, strong underwriting standards, and extensive consumer protections. Ygrene executives and those administering other PACE Programs are financial professionals with decades of banking and lending experience who have underwritten hundreds of thousands of mortgages, unsecured lending products, other loans, and PACE assessments.

One common misunderstanding is that the PACE industry lacks oversight; however, this is incorrect. PACE is one of the most regulated industries in the country. As noted in a report issued by the rating agency Morningstar, "[w]hile private companies administer most PACE programs, local governments typically set guidelines and policies, including eligibility criteria,

fee structures, and interest rates."[4] Local governments authorize and oversee all PACE programs consistent with the state legislative and regulatory requirements applicable to all PACE programs and the oversight provided by additional federal regulatory bodies.

All PACE programs operate under the auspices of local governments and/or statewide authorities, agencies or regulators. Based upon statutes, regulations, policies, and legal agreements, these governmental entities specify and limit the improvements that can be financed to measures that are enabled by law and the policies that underpin these laws. These include: a) improve the safety and security of the home, b) lower the operating expenses of the property through utility and insurance premium cost savings, c) reduce the extent of property damage in the event of natural disaster, and d) improve the overall value of the home.

All eligible improvements have measurable benefits to society and the environment by reducing carbon emissions, conserving valuable natural resources, and protecting infrastructure. In addition to the limited scope of PACE financing, as a property tax assessment, PACE programs must follow strict underwriting standards. As required by statute and/or local government ordinance, all PACE programs cap the total amount a property owner can finance for eligible improvements; this cap is typically 15% of the property value. Despite this upper limit of 15 percent, Ygrene's average lien amount in relation to the property value is only 7.45 percent. Thus, Ygrene PACE projects are small and typically average less than $25,000. Further, because property assessment payments cannot be accelerated, the only amount that is senior to the mortgage is the current annual assessment payment due and, when applicable, any payments in arrears. The annual assessment payment for Ygrene projects averages less than 0.8 percent of the property value.

Even though PACE projects typically finance modest amounts, all PACE programs impose stringent underwriting criteria that must be met by all applicants. For example, in 2014 and 2015 the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) established, as part of the State's PACE Loss Reserve Program, underwriting standards for all residential PACE program administrators. The requirements for all projects enrolled in the program include the following:

- All property taxes for the assessed property must be current for the previous three years or since the current owner acquired the property, whichever period was shorter.
- The property must not be subject to any involuntary lien in excess of $1,000.
- The property must not be subject to any notices of default.
- The property owner must not be in bankruptcy proceedings.
- The property owner must be current on all mortgage debt.
- The party seeking financing must be the holder of record on the property.

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[4] Phoebe Xu, Stephanie Mah, and Brian Sandler, *Clearing the Air – Addressing Three Misconceptions of PACE* (Morningstar, February 2017), pg. 3, available at https://www.pacenation.org/wp-content/uploads/2017/03/morningstar-addressing-misconceptions-pace.pdf

- The property must be located within the geographical boundaries of the PACE Program.
- The Financing must be for a residential property of three units or fewer.
- The Financing amount must be for less than fifteen percent (15%) of the value of the property, up to the first seven hundred thousand dollars ($700,000) of the value of the property, and for less than ten percent (10%) of the remaining value of the property above seven hundred thousand dollars ($700,000).
- The total mortgage-related debt and PACE Financing on the underlying property must not exceed the value of the property.[5]

Similar underwriting standards have been adopted by the residential PACE industry in all three states where residential PACE programs exist, either as required by state statute, local government ordinance or resolution, or as required by the public agencies overseeing the programs. The strict underwriting standards for PACE are also important for ensuring the financial soundness of the PACE provider programs.

In 2016 and 2017, California passed legislation further enhancing PACE underwriting standards and consumer protections. California Assembly Bill 2693 (Dababneh, Chapter 618, Statutes of 2016) added comprehensive financial disclosures modeled after the know-before-you-owe (KBYO) mortgage disclosures and codified the three day right to cancel the financing agreement for all consumers. California Senate Bill 242 (Skinner, Chapter 484, Statutes of 2017) enacted, among other requirements, the following:

- Requiring a confirmation of terms phone call prior to the property owner executing a PACE financing contract reviewing the key terms and disclosures in plain language;
- Requiring the confirmation of terms phone call be made on a recorded line;
- Prohibiting a PACE Program Administrator from deferring the first payment;
- Adding comprehensive contractor oversight and training;
- Prohibiting PACE program misrepresentations; and
- Prohibiting the disclosure to contractors of the maximum amount property owners are eligible to finance.

California Assembly Bill 1284 (Dababneh, Chapter 475, Statutes of 2017) designated the Department of Business Oversight (DBO) as the statewide PACE regulator and enacted, among others, the following additional consumer protections and underwriting standards:

- Requiring PACE Program Administrators to perform a rigorous ability to pay (ATP) determination;
- Requiring stricter underwriting standards in relation to property owner mortgage delinquencies and bankruptcy;[6]

[5] California Code of Regulations § 10081

[6] California Financial Code § 22684 requires the following with regard to mortgage delinquency and bankruptcy underwriting requirements: Subsection (d) The property owner has not been a party to any bankruptcy proceedings

- Requiring policies and procedures for determining property value, including minimum standards for determining the property value from an automated valuation model; and (among other elements)
- Requiring contractor background checks and further contractor training, enrollment, and registration procedures with both the PACE Program Administrator and the DBO.

Most, if not all, of these provisions have been adopted in some form by the residential PACE industry in all states with residential PACE programs. Thus, as the PACE industry has matured, consumer protections and underwriting standards have improved such that PACE operates with the strongest consumer protections and underwriting standards in the home improvement financing industry. Local governments, in order to enable PACE programs in their jurisdictions, must also approve PACE program requirements including the applicable underwriting standards, which adds an additional layer of oversight. The issues surrounding consumer protections and indiscriminate lending that the FHFA describes in the RFI were rare. The very few cases that did exist had largely been addressed through the industry's voluntary adoption of stricter rules and guidelines, as well as the requirements imposed by statute at the state and local levels.

Further, in 2018, Congress passed the Economic Growth, Regulatory Relief, and Consumer Protection Act amending the Truth in Lending Act to require new regulations for PACE to be established by the Consumer Finance Protection Bureau (CFPB) including an ability to pay requirement.[7]

Strong underwriting standards and consumer protections result in customers who are well-qualified and very low risk. The vast majority of Ygrene PACE projects have a combined mortgage and PACE assessment amount (referred to as combined loan-to-value or CLTV) below the 80 percent conforming mortgage loan to equity cushion. Ygrene's weighted average residential mortgage loan-to-value (LTV) ratio for funded PACE projects from program inception through 2019 is 55 percent. The weighted average combined mortgage and PACE assessment (CLTV) ratio is 62 percent. Homeowners completing a Ygrene PACE project, on average, have owned their home for more than eight years. Thus, the average Ygrene customers pursuing PACE financing have been in their home for the better part of a decade and consider PACE because they are invested in their home for the long term and recognize the benefits of a safer, more efficient, and more valuable home. The average PACE customer is one who intends to stay in the home for a long time and has considerable equity. All of these factors indicate that the typical PACE customers are low risk from the perspective of the Enterprises.

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within the last four years, except that the property owner may have been party to a bankruptcy proceeding that was discharged or dismissed between two and four years before the application date and the property owner has had no payments more than 30 days past due on any mortgage debt or nonmortgage debt, excluding medical debt, during the 12 months immediately preceding the application date; Subsection (e) The property owner is current on all mortgage debt on the subject property and has no more than one late payment during the six months immediately preceding the application date and if the late payment did not exceed 30 days past due.

[7] 15 U.S.C. § 1639C

Taken together, the project data, comprehensive underwriting standards, and consumer protections, demonstrate that PACE poses far less risk to the performance of the Enterprises underlying assets and portfolio or to the financial stability to the FHLBs as compared with other forms of home improvement financing even when accounting for the structure of PACE as a senior lien tax assessment.

PACE improvements increase the value of homes and therefore increase the value of the Enterprises' underlying collateral while reducing the risk of portfolio losses in the event of foreclosure

The FHFA RFI refers to PACE as a loan. PACE assessments are not loans. PACE assessments are special property tax assessments that only a local governmental authority may authorize and levy. PACE assessments are similar in form and substance to all other special property tax assessments authorized by a property by a city, county, or other governmental body. Unlike a loan, PACE assessments are like all other property taxes and cannot be accelerated by any entity, including the local government that levied the PACE assessment. While the participating property owner has the right to prepay the PACE assessment at will, no taxing authority has the power to call the assessment due other than the current annual assessment payment owed and any amount in arrears. Therefore, the outstanding PACE balance and all future PACE assessment payments do not have priority over a first mortgage.

The only amount that primes a first mortgage in the event of foreclosure is the current annual assessment payment due and any annual amount in arrears. As previously stated, this amount is de minimis in comparison to the equity the Enterprises hold in any property, the minimum of which is 20 percent for a conforming mortgage or less if the property owner purchases Private Mortgage Insurance (PMI). The FHFA's claim that "a municipality providing 'super-priority' lien status for a PACE loan can erode – partially or completely – that 20 percent equity cushion, as required by statute, and place either the homeowner or a regulated entity, or both, at substantial risk"[8] is not supported by the structure of senior lien residential PACE programs.

Residential PACE assessments, as required by state statute, local government regulations, and PACE program guidelines, among other regulations, must comply with strict assessment to value thresholds that cannot be exceeded and are typically limited to no more than 15 percent.[9] Therefore, even the entire PACE assessment amount cannot be greater than the 20 percent equity cushion the Enterprises hold in any asset. As noted above, the entire assessment cannot be accelerated, and thus only the current annual assessment payment due and any amount in arrears

[8] FHFA RFI pg. 2737
[9] For example, California Financial Code § 22684 subsection (h) states: The financing is for less than 15 percent of the value of the property, up to the first seven hundred thousand dollars ($700,000) inclusive of the existing assessments, and is for less than 10 percent of the remaining value of the property above seven hundred thousand dollars ($700,000)

can prime the mortgage in the event of foreclosure. This annual amount is only a small fraction of the total assessment owed by a participating property.

Ygrene's average California residential PACE assessment as of the end of 2019 totaled $24,624, which equates to an average annual assessment payment of $2,856 and is equivalent to a $238 monthly payment (similar in amount to a family cell phone plan). According to Housingwire, the median single-family home value in California is $605,280.[10] The 20 percent equity cushion held by the Enterprises in this example would be $121,056, which is more than 42 times greater than the average residential PACE annual assessment payment.

Further, research demonstrates that PACE improvement projects <u>increase</u> the value of the property thereby improving the Enterprises' underlying collateral and increasing the equity cushion held by the Enterprises. This offsets the portion of the Enterprises' equity that would be primed by the PACE annual assessment payment and any amount in arrears. According to the Journal of Structured Finance, in a study examining the impact of a PACE assessment on the resale value of a home, the authors found "there is a net positive impact of PACE on the resale value of a home, which ranges from $199 to $8,882."[11] Further, the research determined that the "PACE effect on foreclosed properties is on the higher end of that range," representing nearly a $7,000 premium.[12] This study, the first to analyze the direct impact of actual PACE projects on the value of residential property, is supported by research out of the Lawrence Berkeley National Lab, which analyzed the impact of the installation of solar panels on residential property values, one of the most common PACE improvement projects in California. That study, *Appraising into the Sun: Six-State Solar Home Paired-Sales Analysis*, found solar photo-voltaic (PV) systems increased the median sale price of a home by $15,000.[13]

Thus, PACE assessments, as well as the improvements PACE assessments fund, have been proven to increase the value of the Enterprises' underlying mortgage assets. This increase in value through the improvements made to the property, which PACE requires must be permanently attached to the property and cannot be removed, serves as built-in downside protection to the Enterprises in the event of foreclosure. The value of the PACE improvement is thus likely to more than offset the amount of the PACE annual assessment payment and any amount in arrears that could prime the mortgage.

Additionally, the likelihood of home foreclosure by a city, county, or other governmental body as a result of delinquent property taxes is extremely low. Yet, the increase in value of the home as a result of the PACE improvements is ubiquitous across the entirety of the Enterprises' portfolio. Therefore, in the event a home goes into foreclosure for some reason other than

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[10] Housingwire, *California's Median Home Price Jumps 6% to $605,280*, available at: https://www.housingwire.com/articles/california-median-home-price-jumps/

[11] Laurie Goodman and Jun Zhu, "PACE Loans: Does Sale Value Reflect Improvements?," *Journal of Structured Finance,* vol. 21, no. 4 (Winter 2016), pg. 3, available at: https://www.pacenation.org/wp-content/uploads/2016/10/JSF_Winter_2016_PACENation.pdf

[12] Id.

[13] Sandra Adomatis and Ben Hoen, "Appraising into the Sun: Six-State Solar Home Paired-Sale Analysis," *Lawrence Berkeley National Laboratory*, 2015, available at: https://emp.lbl.gov/sites/default/files/lbnl-1002778.pdf

delinquent property taxes, the Enterprises would be better protected against losses in those circumstances as well.

These research studies and the conclusions reached should be of no surprise. PACE-financed property improvement projects are just that: property improvement projects designed to benefit participating properties. Homeowners do not invest in their properties using PACE financing, or any other type of financing for that matter, to make their properties less valuable, less efficient, less safe, or less comfortable. PACE, both in principle and as proven by research, increases the value of the Enterprises' underlying assets and reduces the likelihood of losses as a result of foreclosure for any reason including foreclosure as a direct result of PACE property tax delinquency.

PACE reduces the risk of catastrophic loss to the Enterprises' underlying collateral as a result of natural disasters thereby reducing the risk of losses to the Enterprises' portfolios

A growing trend in the residential PACE market is the financing of natural disaster resiliency property improvements. Florida's PACE enabling statute allows hurricane hardening measures to be financed by PACE. California's PACE enabling statutes include seismic and wildfire resiliency as eligible improvements that can be financed by PACE. PACE hurricane resiliency measures include roof reinforcement, high impact windows and doors, secondary water barriers, and storm shutters among others. Seismic resiliency measures include seismic foundation strengthening, masonry reinforcement, and lateral systems and column strengthening among others. Wildfire resiliency measures include flame retardant roofs, ignition resistant outer walls, tempered glass heat resistant windows, and vent protection among others. These property resiliency measures can reduce the risk of catastrophic damage to properties in the event of natural disasters and could have a profoundly positive impact on mitigating against losses to the Enterprises resulting from property destruction, mortgage delinquencies, mortgage defaults, and foreclosures in regions prone to natural disasters.

Research by the University of Southern California's Schwarzenegger Institute and Sol Price School of Public Policy, *Impacts of the Property Assessed Clean Energy (PACE) Program on the Economies of California and Florida*, the most comprehensive academic analysis of PACE programs to date, examined the impact of PACE resiliency property improvements with regard to property damage avoidance and property owner displacement mitigation as a result of natural disasters. The research, the first to analyze PACE resiliency projects, analyzed over $275 million of hurricane protection property improvement investment in Florida by the state's leading PACE provider, Ygrene Energy Fund. The USC research study concluded that the $275 million investment in hurricane protection property improvements "is estimated to result in $507.8 million in avoided property damage and $134.94 million in avoided temporary homeowner relocation costs."[14]

[14] Adam Rose and Dan Wei, *Impacts of the Property Assessed Clean Energy (PACE) Program on the Economies of California and Florida*. University of Southern California Schwarzenegger Institute, Los Angeles, CA, 2019, available at:

The $275 million in hurricane hardening investment came from 14,350 hurricane resiliency projects financed by Ygrene Energy Fund between 2013 and July 2018. Thus, the $507.8 million in avoided property damage and $139.94 million in avoided property owner displacement costs equates to $44,790 of avoided property damage and property owner displacement costs per hurricane resiliency PACE project. The avoided property damage and displacement costs would directly offset losses to the Enterprises during natural disasters by preventing mortgage delinquencies, issuances of forbearance, and foreclosures.

Moreover, as the FHFA is likely aware, the current rate of homeowner underinsurance poses a critical threat to the Enterprises' portfolio. According to CoreLogic, more than 60% of homes are underinsured by an average of 20%.[15] Homeowner underinsurance is one of the most significant risks to the Enterprises' portfolios. As reported in CoreLogic's 2019 Insurance Coverage Adequacy Report concerning the impact of natural disasters, "[t]he disruption of a family's regular flow of income and payments, as well as substantial loss in property value, can trigger mortgage default; especially if homeowners are underinsured and cannot afford to rebuild."[16] PACE financed resiliency improvements directly mitigate against these risks to the Enterprises' portfolios by helping to offset the average underinsurance gap through avoided property damage and loss. Additionally, property owners who have invested in their property may be more likely to rebuild and repair, especially if the damage is minimized by the presence of PACE-financed home hardening measures. The likely result keeps property owners in their homes to the benefit of the mortgage holders.

Recent research out of the University of South Florida's Patel College of Global Sustainability supports the conclusions of the Schwarzenegger Institute's research by further scaling the resiliency impact data from an additional investment of $249 million in PACE hurricane protection property improvements by Ygrene Energy Fund. That study concludes that, from inception to date, Ygrene Energy Fund's total PACE investment of $525 million in hurricane protection will lead to $970 million in avoided property damage and $250 million in property owner displacement costs for a total hurricane loss avoidance of over $1.2 billion.[17] This means that every $1 of PACE investment in hurricane protection property improvement investment leads to $1.84 in avoided property damage and $0.49 in avoided homeowner displacement costs. Thus, every $1 of PACE home hardening investment reduces $2.33 of property damage and displacement risk to the Enterprises' portfolios.

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http://www.schwarzeneggerinstitute.com/images/files/SI_White_Paper%20PACE_Economic_Impacts_FINAL_3_6_19.pdf

[15] Consumer Reports, *What You Don't Know About Homeowners Insurance Could Cost You*, available at: https://www.consumerreports.org/homeowners-insurance/what-you-dont-know-about-homeowners-insurance-could-cost-you/

[16] CoreLogic, *2019 Insurance Coverage Adequacy Report: The Effects of Underinsurance to the property Ecosystem,* March 2019, pg. 2, available at: https://www.corelogic.com/downloadable-docs/2019-insurance-coverage-adequacy-report-0419-06-screen.pdf

[17] Zachary Oliphant, Thomas Culhane, and Pradeep Haldar, *Public Impacts of Florida's Property Assessed Clean Energy (PACE) Program*, University of South Florida Patel College of Global Sustainability, 2020, available at: https://www.usf.edu/pcgs/documents/pace-report-final.pdf

Natural disasters are posing an increasing risk to the Enterprises' assets. A study published in September 2019 by HEC Montreal and Johns Hopkins University examines the threat of natural disasters to the mortgage industry. That research found instances of foreclosure increased by 3.6 percent within the first year following a hurricane and 4.9 percent within three years following a hurricane.[18] Additionally, Black Knight's October 2017 Mortgage Monitor reported that hurricanes Irma and Harvey increased the national non-current mortgage rate by 0.32 percent and 0.13 percent, respectively, increasing hurricane attributed non-current mortgages by more than 226,000 mortgages.[19]

Natural disasters cause property damage and loss and increase mortgage delinquency, default, and foreclosures rates. As conservator of the Enterprises, the FHFA may "take such action as may be: (i) necessary to put the regulated entity in a sound and solvent condition; and (ii) appropriate to carry on the business of the regulated entity and preserve and conserve the assets and property of the regulated entity."[20] Mitigating against the negative impacts of natural disasters to the Enterprises' assets is essential to the FHFA's charge as conservator. PACE home hardening projects in Florida have been proven to mitigate against these very negative impacts. Therefore, PACE programs unequivocally reduce risk to the Enterprises and further improve the Enterprises' financial solvency.

In fact, the FHFA's current policy against PACE programs itself may be having a detrimental impact on the Enterprises' financial condition. The policies under consideration in the FHFA RFI go even further than existing policy, which would only increase the financial risk to the Enterprises through increased exposure to natural disaster-related losses. In fact, as established by the research and evidence cited herein, the FHFA, in supporting its charge to ensure solvency and financial strength of the Enterprises, should reverse its existing policies concerning PACE assessments. The FHFA's current policy related to properties with PACE assessments is limiting the benefits that PACE projects could have on the properties in the Enterprises' portfolios. Clearly the FHFA should not consider implementing the policies described in the RFI.

PACE substantially reduces the operating costs of homes through utility and insurance premium cost savings thereby decreasing the risk of mortgage delinquency and default

PACE financing is used to finance specific property improvement measures that reduce energy consumption, generate renewable energy, reduce water consumption, or increase the resiliency of properties during natural disasters. Therefore, all PACE-eligible measures, relative to less efficient and less resilient alternatives, reduce operating costs of properties either through energy and water utility cost savings, insurance premium cost savings, or natural disaster repair cost savings. In all circumstances when a household's operating costs are reduced, the mortgage

[18] Amine Ouazad and Matthew Kahn, *Mortgage Finance in the Face of Rising Climate* Risk, HEC Montreal and Johns Hopkins University, 2019, available at: http://www.ouazad.com/resources/paper_kahn_ouazad.pdf
[19] Black Knight, *Mortgage Monitor: October 2017 Report*, 2017, available at: https://cdn.blackknightinc.com/wp-content/uploads/2018/01/BKFS_MM_Oct2017_Report.pdf
[20] Federal Housing Finance Agency, *History of Fannie Mae and Freddie Mac Conservatorships,* available at: https://www.fhfa.gov/Conservatorship/Pages/History-of-Fannie-Mae--Freddie-Conservatorships.aspx

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holder is benefited by that household being cheaper to operate each month, which makes it easier for the homeowners to meet their monthly mortgage obligation. In fact, research released by Capital-E in 2012 concluded that "[e]nergy efficiency measures typically enhance a borrower's ability to pay since the monthly energy bill reductions typically exceed the additional monthly payments associated with the energy efficiency improvements."[21] Research performed by The Institute for Market Transformation (IMT) and UNC Center for Community Capital in 2013 entitled *Home Energy Efficiency and Mortgage Risks* "indicates that default risks are on average 32 percent lower in energy efficient homes, controlling for other loan determinants. This finding is robust, significant, and consistent…." The study goes on to conclude that "default risk is lower for more energy-efficient homes. The lower risks associated with energy efficiency should be taken into consideration when underwriting mortgages."[22]

Data from the Energy Information Administration shows that between 2000 and 2018 utility costs across the nation increased an average of 2.4% annually. California's utility costs increased at an average annual rate of 2.9% during the same time period.[23] By comparison, the average annual inflation rate in the United States during the same time period was 1.8%.[24] By contrast, the cost of solar photo voltaic (PV) systems has been dropping steadily since 2010. According to the National Renewable Energy Lab, residential solar PV systems have dropped from $7.34 per watt in 2010 to $2.70 per watt in 2018, which is greater than a 63% cost reduction during that time period. Notably, energy efficiency remains one of the cheapest forms of energy. A 2015 Lawrence Berkeley National Lab study found that the average cost in the United States of "saved electricity," or energy efficiency, was 4.6 cents per kilowatt hour for all sectors, and the residential sector was even lower at 3.3 cents per kilowatt hour.[25]

With utility costs rising faster than inflation, renewable energy costs dropping, and energy efficiency costs still one of the cheapest forms of energy savings, homeowner investment in renewable energy and energy efficiency improvements to mitigate against those rising costs will only reduce the operating costs of homes over time and improve mortgage payment performance. Marina Walsh, Vice President of Industry Analysis for the Mortgage Bankers Association noted in a 2017 article reporting on mortgage delinquency rates that "[t]ypically, in the fourth quarter of any given year, we see a rise in delinquencies because of higher heating

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[21] Kats, Greg, Menkin, Aaron, Dommu, Jeremy and DeBlod, Matthew, *Energy Efficiency Financing Models and Strategies* (March 2012) pg. 18, available at: http://newbuildings.org/sites/default/files/EnergyEfficiencyFinancing_ModelsStrategies201110.pdf

[22] UNC Center for Community Capital and Institute for Market Transformation, *Home Energy Efficiency and Mortgage Risks*, 2013, pg. 1, available at: https://www.imt.org/wp-content/uploads/2018/02/IMT_UNC_HomeEEMortgageRisksfinal.pdf

[23] U.S. Energy Information Administration (EIA), *Electricity*, accessed March 2020, available at: https://www.eia.gov/electricity/data.php#sales

[24] US Inflation Calculator, *Current US Inflation Rates: 2009-2020,* available at: https://www.usinflationcalculator.com/inflation/current-inflation-rates/

[25] Ian Hoffman et al., *The Total Cost of Saving Electricity through Utility Customer-Funded Energy Efficiency Programs: Estimates at the National, State, Sector and Program Level,* Lawrence Berkeley National Lab, April 2015, available at: https://emp.lbl.gov/sites/all/files/total-cost-of-saved-energy.pdf

costs."[26] Rising utility costs are thus a significant risk and mitigating against such volatility will only improve the Enterprises' overall portfolio performance.

Homeowners also see significant savings on their home insurance premiums after using PACE financing to invest in hurricane home hardening measures. Florida has some of the highest homeowner insurance rates in the country due to its significant exposure to hurricanes. According to Insurance.com, the average yearly home insurance rate in Florida is "$3,575, which is nearly $2,350 more than the national average of $1,228."[27] Additionally, national insurance premium rates have been rising significantly. According to a recent study by QuoteWizard, a leading insurance marketplace and subsidiary of LendingTree, between 2007 and 2016 homeowner insurance costs have risen in every state with the median insurance increase equaling 52%.[28]

As part of a decade of retooling the Florida economy for resilience after Hurricane Andrew in 1992, in 2001 Florida passed legislation requiring all residential insurance carriers to provide wind premium discounts to homeowners who installed hurricane home hardening measures such as impact resistant windows and doors and roof reinforcement measures.[29] Homeowners who utilize PACE financing for hurricane home hardening improvements can save significantly on their annual insurance premium costs. Like property taxes, insurance costs are often escrowed as part of the homeowner's mortgage payment. Thus, the insurance savings homeowners achieve via hardening their home can exceed the additional annual PACE assessment payment, which would reduce their total mortgage escrow payment and make it easier for homeowners to meet their monthly mortgage obligations.

As noted above, leading research out of the University of Southern California's Schwarzenegger Institute analyzed 21,766 residential PACE projects in Florida, 14,350 of which were hurricane home hardening projects (including 23 commercial projects). That research found that, over the next 20 years, homeowners will save an estimated $708 million in insurance premium costs as a result of the home hardening measures installed. This equates to over $49,337 of insurance savings per PACE hurricane hardening project over 20 years or $2,466 annually per project.[30] In addition to that research, a report published in 2010 from the Florida Commission on Hurricane Loss Projection Methodology found that in 2008 the Citizens Property Insurance Corporation, one of the largest insurers in the state at the time, "provided an estimated $782 million in mitigation credits" for policy holders resulting in an "average windstorm

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[26] Mortgage Bankers Association, *Delinquencies Decline in Latest MBA Mortgage Delinquency Survey,* May 2016, available at: https://www.mba.org/2017-press-releases/may/delinquencies-decline-in-latest-mba-mortgage-delinquency-survey

[27] Michelle Megna, "Homeowners Insurance in Florida," Insurance.com, October 22, 2018, available at: https://www.insurance.com/home-and-renters-insurance/coverage/florida-homeowners-insurance: Coverage level is for a $200,000 dwelling coverage with a $1,000 deductible, and $100,000 liability.

[28] QuoteWizard, *Home insurance Rate Increase by State,* April 19, 2019, available at: https://quotewizard.com/news/posts/home-insurance-rate-increase-by-state

[29] Florida Statutes § 627.0629

[30] Rose and Wei, 2019

mitigation credit of $1,454." [31] These research studies confirm how important hurricane home hardening is to reducing homeowner insurance costs in the state of Florida.

When property owners save on their utility and insurance costs, they are better positioned financially to make their mortgage payments. Additionally, because PACE is a property tax assessment, the annual assessment payment is fixed for the life of the financing. Consequently, as utility and insurance costs increase, the utility and insurance savings achieved by PACE-improved properties will grow as well and will further protect the Enterprises' assets from property owners falling into distress as a result of high and volatile utility and insurance costs.

As more science and technology emerges, quantifying the local impacts of climate change on the physical hazard risk to homes in PACE states, such as increased flooding from hurricane rainfall and storm surge in Florida and more intense wildfires in California, the benefit-cost equation for PACE funded improvements is likely to shift more decidedly toward a significant reduction in risk to the Enterprises' portfolio. Improvements made at a relatively certain cost using PACE financing could protect against highly uncertain trends in insurance premiums and potential damage to communities from natural disasters, both of which impact the cost of home ownership and value of the Enterprises' mortgage collateral.

PACE-improved properties have lower property tax delinquency rates than properties without PACE thereby reducing the risk of tax foreclosure and subsequent losses to the Enterprises' portfolios

In evaluating the perceived risk PACE assessments pose to the Enterprises' assets, a key data point helping determine if any risk exists is PACE assessment payment performance. When implementing policies in 2010, 2012, and 2014, the FHFA had very little PACE assessment payment performance and delinquency data and research to evaluate. As the residential PACE market has grown, so too has the available data on PACE assessment payment performance and delinquency. Available evidence indicates that properties with PACE assessments have lower property tax delinquency rates when compared to properties without PACE assessments.

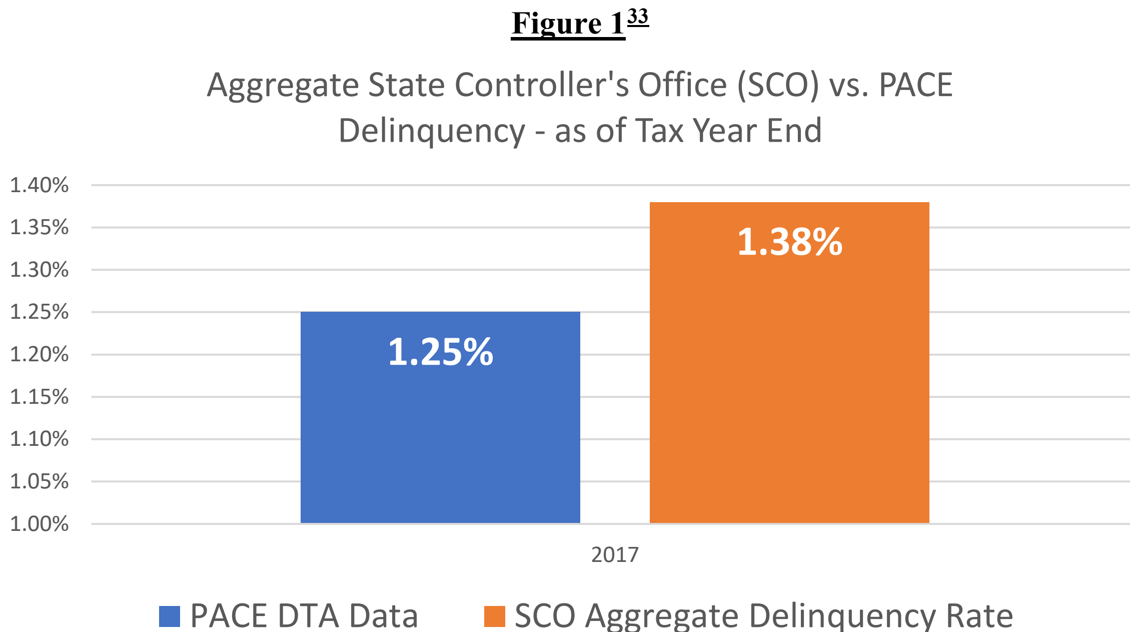
In February 2018, the global credit rating agency DBRS released a study "Residential PACE Delinquency Trends" analyzing California residential PACE delinquency rates against general California property tax delinquency rates. That study concluded that "PACE delinquency metrics are lower than general aggregate property tax and single-family residential only property tax delinquency levels."[32] Figure 1 below compares the California State Controller's Office

[31] Florida Commission on Hurricane Loss Projection Methodology, *Windstorm Mitigation Discounts Report to the Governor, the Cabinet, the President of the Senate, and the Speaker of the House of Representatives,* February 1, 2010, pg. 5, available at: https://www.sbafla.com/method/Portals/Methodology/WindstormMitigationCommittee/2010/20100201_MitigationDiscountReport.pdf

[32] DBRS, *Residential PACE Delinquency Trends,* DBRS, February 2018, pg. 3, available at: https://www.dbrsmorningstar.com/research/323286/dbrs-publishes-commentary-on-residential-pace-delinquency-trends

aggregate property tax delinquency rates for 2017, the most recent year in the study, to the PACE delinquency rates during the same period and at the same delinquency reporting period:

Figure 1[33]

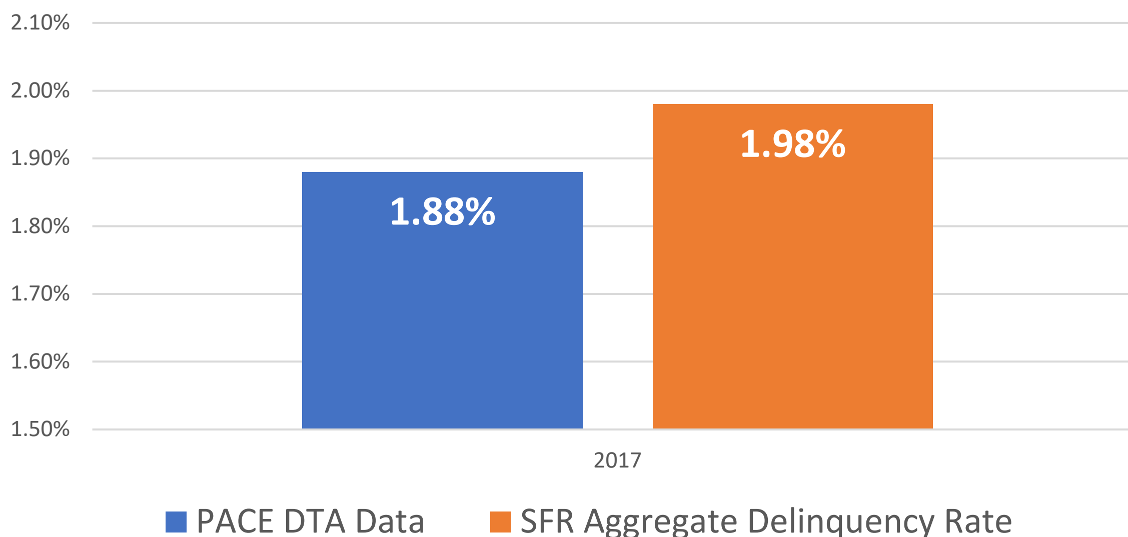


As the data shows, PACE delinquency rates are consistently lower than the average aggregate property tax delinquency rate for properties in California as reported by the California State Controller's Office.

PACE delinquency rates were also lower as compared to single-family residential property tax delinquency rates. Figure 2 below compares the single-family residential (SFR) property tax delinquency rates from for 2017 to the PACE delinquency rates during the same period and at the same delinquency reporting period:

[33] Id., pg. 8

Figure 2[34]



Later, in June 2018, Kroll Bond Rating Agency (KBRA) released a report *The PACE Evolution*, which analyzed property tax delinquency rates for properties with and without PACE assessments. KBRA analyzed delinquency data reported through the California Department of Business Oversight's annual report of PACE originators and compared that data to general property tax delinquency rates reported by LERETA, LLC, a tax service vendor. KBRA's research concluded that "there is no significant difference in the rates of property tax delinquency for residential properties with a PACE assessment compared to residential properties without a PACE assessment."[35]

No evidence indicates that PACE financing increases the risk of property tax delinquency and, by extension, tax foreclosure as a result of tax delinquency. In fact, all research indicates that PACE reduces the likelihood of homeowners falling into property tax delinquency. Therefore, homes with PACE assessments are less likely to fall into property tax delinquency distress, which reduces the likelihood of tax foreclosures. Consequently, the risk to the Enterprises' portfolio is reduced by increasing the rate of homeowners staying in their homes and continuing to make mortgage and property tax payments.

Notably, PACE property tax delinquencies are significantly lower than residential mortgage delinquency rates. As reported in Black Knight's December 2017 Mortgage Monitor report, the national mortgage delinquency rate was 4.7% or more than twice the 2017 PACE

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[34] Id., pg. 9

[35] Kroll Bond Rating Agency, *The PACE Evolution*, June 22, 2018, pg. 4, available at: https://documents.krollbondratings.com/report/11071/abs-the-pace-evolution

delinquency rate as reported by DBRS.[36] Thus, not only do properties with PACE perform better than properties without PACE regarding property tax payment performance, they also perform significantly better than the national mortgage delinquency rate, which further indicates that properties with PACE are less likely to fall into property tax or mortgage distress. This positive impact can only reduce the likelihood that the Enterprises, FHLB, or the MMIF would experience any losses or negative impact as a result of a PACE assessment itself or as a result of the availability of PACE financing in a state or community.

California created a PACE Loss Reserve Program to protect mortgage holders from any losses as a direct result of PACE and that reserve has never been tapped

In response to the FHFA's initial concerns surrounding the perceived threat to the Enterprises' portfolio as a result of senior lien PACE programs, the California legislature passed Senate Bill 96 in 2013, which authorized the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) to establish a PACE Loss Reserve Program "to assist in addressing the FHFA's financial concerns" with regard to senior lien residential PACE financing programs.[37]

CAEATFA launched the PACE Loss Reserve Program in March of 2014 $10 million in capital. The PACE Loss Reserve Program is designed to cover losses by mortgage lenders resulting from PACE tax foreclosures. Lenders suffering a direct loss from a senior lien PACE assessment can make a claim for reimbursement from the loss reserve funds. As of October 2019, 146,227 residential PACE assessments were enrolled in the PACE Loss Reserve Program amounting to a total of $3,379,587,227 of residential PACE assessment volume. The PACE Loss Reserve covers 21 PACE programs across the state including all five private residential PACE program administrators.[38]

The PACE Loss Reserve Program ensures that mortgage lenders suffering a loss as a result of a senior lien PACE assessment can be made whole. However, there is no evidence that mortgage lenders, in the over ten years of active residential PACE program activity, have suffered losses as a result of a senior lien PACE assessment. As noted by CAEATFA, "[t]o date, CAEATFA has not received any claims on the loss reserve."[39] CAEATFA originally estimated that the PACE Loss Reserve Program would last between eight and twelve years; however, given the absence of claims on the reserve to date, the reserve itself may last far longer than originally anticipated. Thus, there is no evidence or data indicating that mortgage lenders or the Enterprises

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[36] Black Knight, *Mortgage Monitor: December 2017 Report*, 2018, available at: https://cdn.blackknightinc.com/wp-content/uploads/2018/03/BKFS_MM_Dec2017_Report.pdf

[37] California Alternative Energy and Advanced Transportation Financing Authority, *Property Assessed Clean Energy (PACE) Loss Reserve Program: Background and History,* accessed March 2020, available at: https://www.treasurer.ca.gov/caeatfa/pace/background.asp

[38] The five private residential PACE Program Administrators are: Ygrene Energy Fund, Renew Financial, Renovate America, PACEFunding, and FortiFi.

[39] California Alternative Energy and Advanced Transportation Financing Authority, *Property Assessed Clean Energy (PACE) Loss Reserve Program: Program Activity,* accessed March 2020, available at: https://www.treasurer.ca.gov/caeatfa/pace/activity.asp

have suffered any losses as a result of a PACE assessment or from the mere availability of PACE financing in participating California communities.

The evidence, data, and research described above demonstrates, unequivocally, that PACE financing has had a positive impact on the Enterprises' underlying assets. In fact, all indications are that PACE supports the mission of the FHFA to ensure that the Enterprises and the FHLB system are operating in a safe and sound manner and that there is a strong, sustainable, and resilient national housing market. Thus, the policies the FHFA is considering in this RFI are unwarranted and would serve only to harm the national housing market and the Enterprises' portfolios.

Quantifying the net impact of Ygrene PACE financing demonstrates the benefit PACE improvements have on the Enterprises' portfolios

Ygrene presents below the potential net impact of Ygrene's PACE financing on the Enterprises' portfolios. The information presented includes the subsequent potential risk and benefit to the Enterprises' portfolios as a result of PACE assessment financing on existing assets in the portfolios.

From inception to year-end 2019, Ygrene financed 75,991 residential PACE projects. These projects have an average annual assessment payment of $2,503, which represents a total of $190,205,473 in annual PACE assessment payments due. This is a conservative estimate because this dollar amount does not account for PACE assessments that have been paid off and thus no longer exist on a particular property. Therefore, this amount is the hypothetical maximum annual assessment amount due in 2019.

Using the DBRS 2017 single family residential PACE delinquency rate of 1.88% noted above, the hypothetical amount that could possibly prime the Enterprises' portfolio of assets would be $3,575,863. For context, the Urban Institute reports that the total quantity of outstanding mortgage securities held by the agency market (the Enterprises and Ginnie Mae) in September 2019 was $6.8 trillion,[40] which is more than 1,900,000 times greater than the potential delinquent PACE assessment amount that could prime the Enterprises' mortgage assets. As a percentage, the hypothetical delinquent PACE amount represents 0.000053% (or less than one ten thousandth of one percent).

However, the above does not account for the quantifiable positive impact that PACE assessment projects have had on the Enterprises' portfolios. Addressing the same group of residential PACE projects financed by Ygrene, the positive impacts are as follows:

1. Property Value: Based on the Journal of Structured Finance research noted above, the increase in property value as a result of PACE financing is between $199 - $8,882.

[40] Housing Finance Policy Center, *Housing Finance at a Glance: A Monthly Chartbook*, Urban Institute, September 2019, pg. 7, available at: https://www.urban.org/sites/default/files/publication/101091/september_chartbook_2019_1.pdf

Extrapolated across Ygrene's portfolio of projects, that equates to a total increase in the value of the Enterprises' underlying assets by between $15,122,209 - $674,952,062.

2. Disaster Mitigation: As noted above, PACE projects also reduce property damage and displacement in the event of natural disasters. This impact is a permanent impact and realized immediately when the PACE improvement projects are installed. Based on research noted above from the University of Southern California and the University of South Florida, the total estimated avoided property damage and displacement costs realized in the event of natural disasters equals $1,243,000,000.[41]
3. Annual Utility and Insurance Cost Savings (for 2019 only): As noted above, PACE projects reduce the operating costs of the properties PACE financing improves. Based on research noted above from the University of Southern California and Ygrene's internal energy models, the estimated annual utility and insurance premium savings Ygrene residential property owners may save in 2019 is over $90,000,000.[42]

The total positive impacts to the Enterprises' assets in their portfolios are thus between $1,348,000,000 and $2,007,000,000, or between 377 and 561 times greater than the hypothetical delinquent PACE assessment amount that would prime the Enterprises' assets. Thus, the total net potential positive impact in 2019 of Ygrene PACE financed projects on the Enterprises' portfolio is between $1,344,000,000 and $2,004,000,000. The risk the FHFA claims exists as a result of senior lien PACE are speculative and transitory, whereas the PACE improvements to the property are tangible and permanent. Thus, this data unequivocally demonstrates that PACE has a positive impact on the Enterprises' underlying mortgage assets and portfolios. There is no evidence or data that identifies or quantifies that PACE assessments have ever or would ever present a net negative risk to the Enterprises' portfolios.

FHFA policy toward PACE is inconsistent with its policy toward all other property taxes and special assessments

A key component of the FHFA's assertion that PACE threatens the underlying assets and portfolios held by the Enterprises is that PACE assessments, as property tax liens, are senior to first mortgages. However, all property taxes and assessments are senior to first mortgages. Ygrene is unaware of any policy or practice by the FHFA, the Enterprises, the FHLBs, FHA, or any other mortgage lender that objects to the priority of other property taxes or assessments. Nor is Ygrene aware of any policies and practices that address variations in property tax rates and assessment amounts across cities, counties, and states. The FHFA does not object to the

[41] This data illustrates the scaled impact of combined disaster loss and displacement cost avoidance of PACE investment accounting for both hurricane resiliency and seismic resiliency improvement projects based on University of Southern California and University of South Florida research noted above as of the end of 2019, rounded down to the nearest million.

[42] This data illustrates the scaled annual utility and insurance savings impact data for 2019 only for all residential Ygrene PACE projects as of the end of 2019 based on University of Southern California research noted above and Ygrene's internal energy model. The annual savings data for 2019 only accounts for a single year of savings data and does not account for the rising costs of utility and insurance rates over time as calculated in lifetime savings estimates, rounded down to the nearest million.

existence of senior lien school district assessments, water district assessments, fire district assessments, or any other special tax assessments lawfully placed on real properties. Nor does the FHFA object to increases in ad valorem property taxes over time. And yet, the risk these senior lien property taxes and assessments pose to the Enterprises in the event of tax foreclosure is astronomically higher than the de minimis risk PACE financing could pose if one were to ignore all of the positive impacts of PACE on the Enterprises' assets as analyzed above.

For example, the effective property tax rate in New Jersey in 2019, where residential PACE is not available, was 2.16%, and the effective property tax rate in California, where residential PACE is available, was 0.76%, which is nearly one-third of the property tax rate in New Jersey.[43] Further, the per capita property taxes in New Jersey were $3,074, which is more than double the $1,451 in per capita property taxes in California. In fact, New Jersey has one of the highest property tax rates in the country. Assuming two identical properties in each state, this difference in property tax rates between New Jersey and California creates a quantifiable difference in risk to the Enterprises' portfolios in the event of tax foreclosure. As noted, Ygrene is unaware of the FHFA issuing any policy directing the Enterprises' to decrease the mortgage LTV threshold in New Jersey as compared to California based on this difference in risk. Yet, this example of risk dwarfs the hypothetical risk posited by the FHFA RFI for PACE assessments or the mere availability of PACE financing in a state or community.

Property tax rates also vary by city and county as well. The effective property tax rate in Absecon city in Atlantic County, New Jersey in 2019 was 3.076%. The effective property tax rate in neighboring Brigantine city, just a few miles away, was 1.688%.[44] Ygrene is unaware of the FHFA considering an adjustment to underwriting guidelines for Enterprise conforming mortgages to address these differences in tax rates for properties just miles away from each other in different cities. Further, effective tax rates vary over time. In Absecon city in 2012, the effective tax rate was 2.263%, which was significantly lower than the effective tax rate in 2019. The FHFA has not, apparently, objected to this increase in property taxes for a homeowner who purchased a home in Absecon with an Enterprise conforming mortgage in 2011 and now has a higher property tax payment in 2019. There is no fundamental difference in this type of increase in property taxes as compared to the addition of a PACE special tax assessment. Both increase the total property tax liability to the property owner, and both would prime the mortgage in the event of tax foreclosure. Yet the FHFA treats one entirely different from the other without regard to the relative risk each poses to the Enterprises' portfolios.

This is just one example of the tens of thousands of differences in property tax and assessment rates across the country. All pose much greater risk to the Enterprises' portfolios through priming the mortgage in the event of foreclosure and all without objection from the FHFA. Hence, the FHFA's policy toward PACE is incongruent with its policy toward all other

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[43] Samuel Stebbins, "Property Tax Varies by State. Here's a Look at What You'll Pay," USA Today, February 11, 2019, available at: https://www.usatoday.com/story/money/2019/02/11/property-taxes-us-state-state-look-what-youll-pay/38909755/

[44] New Jersey Department of the Treasury, *General Tax Rates by County and Municipality,* accessed March 2020, available at: https://www.state.nj.us/treasury/taxation/lpt/taxrate.shtml

property taxes and assessments despite those property tax increases presenting a much greater risk to the Enterprises' portfolios.

Therefore, the policies that the FHFA is considering in relation to residential PACE are unjustifiable in relation to the FHFA's position on all other property taxes and assessments that are no different from the form and substance of PACE special tax assessments.

Responses to Questions 5-9

Question 5: *How might the Enterprises best gather or receive information on their existing guaranteed or owned mortgage loan portfolios to understand which loans have PACE liens and in what amount? Should mortgage loan servicers be required to gather and report such information to the Enterprises on a periodic basis? What would the costs and implications be of such a requirement?*

Ygrene currently sends all mortgage lenders and/or loan servicers a written notice of a property owner's intent to enter into a PACE financing agreement. Additionally, notices are recorded in the public records in California and Missouri indicating the total maximum amount that a property owner may be eligible for through its PACE financing application. The notices recorded in Florida indicate the final amount financed through a PACE assessment. Further, participating property owners are advised to notify their mortgage lender or servicer about the amount of their annual PACE assessment and to make any adjustments to their escrow payments to account for the increase in property taxes as a result. Thus, additional reporting is unnecessary.

Question 6: *Would it be most effective for states that authorize PACE programs to require a registry of PACE lending so that information currently only held by PACE vendors or local tax rolls could be available and maintained on an ongoing basis? What data should be included in such a registry? What access would be permitted while protecting consumer privacy? Should a federal agency provide for such a registry? What minimum information would be available to allow credit reporting agencies to include PACE obligations in credit reports obtained in connection with mortgage origination or servicing?*

Transparency, accountability, and of course adherence to all applicable laws and regulations with respect to local, state, and federal authorities has been a hallmark of PACE programs from inception. This is why Ygrene, and other private third-party providers, produce regular activity reports for city and county governments. As further evidence, PACE programs have enrolled in and report to the California State Treasurer per the requirements of the CAETFA Loan Loss Reserve program. Additionally, there are numerous examples in both statute and regulation of required reporting that must be provided on a prescribed basis. And, finally, there are numerous examples of voluntary industry collaborations, both within PACE and with other parties such as realtors, banks, loan servicers, and title companies, to name several.

Regarding a "registry of PACE…", perhaps the best place to begin is in California Assembly Bill 1284 (Dababneh, Chapter 475, Statutes of 2017), Section 22693 (a), which states "The commissioner [DBO] may, by rule, require a program administrator to use a real-time

registry or database system for tracking PACE assessments…."[45] While this language stops short of creating a statutory requirement for PACE programs to develop a "registry" or similar system, the PACE industry has taken a cue from this section and has begun exploring how such a system could be developed to serve the needs of consumers, regulators, state and local governments, PACE providers, and potentially others. However, as referenced in the question itself, there are many important considerations before development and implementation could take place including, first and foremost, the protection of personal and private consumer information. Overall, the concept of a PACE registry is an intriguing one that, led by the PACE programs, could be advanced.

Question 7: *Should servicers of mortgage loans for the Enterprises provide an annual or more frequent notice to existing borrowers in PACE-eligible communities informing them that, under the terms of their mortgage, PACE liens are not permitted? Should borrowers be informed of the difficulties that may arise in selling or refinancing their home when a PACE lien has been placed on their property? What other information, if any, should be provided by servicers to borrowers with regard to PACE liens? Should borrowers in PACE jurisdictions be required to execute any additional agreements or certifications in connection with mortgages for the Enterprises, Home Loan Banks or FHA guaranteeing the borrowers will not accept PACE financing for energy efficiency improvements?*

PACE assessments are special property tax assessments and are not loans. Therefore, PACE special tax assessments cannot violate the terms of the homeowner's mortgage any more than other property taxes and assessments owed on a property could violate the terms of a property owner's mortgage. The Florida PACE statute notes in Section 163.08, paragraph (13) that "[a] provision in any agreement between a mortgage or other lienholder and a property owner, or otherwise now or hereafter binding upon a property owner, which allows for the acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement as provided for in this section is not enforceable."[46]

With regard to disclosures, California passed Assembly Bill 2693 in 2016 requiring comprehensive financial disclosures to homeowners. One disclosure that must be initialed by the property owner states: "I understand that I may be required to pay off the remaining balance of this obligation by the mortgage lender refinancing my home. If I sell my home, the buyer or the mortgage lender may require me to pay off the balance of this obligation as a condition of sale."[47] This disclosure is also incorporated into the confirmation of terms phone call added by Senate Bill 242 and now required by California statute. These disclosures and the associated confirmation of terms phone call that further reviews the disclosures with the property owner have been adopted by Ygrene for all residential PACE financing agreements in all states where Ygrene operates. This best practice has been adopted across the residential PACE industry. As

[45] California Financial Code § 22693
[46] Florida Statute § 163.08
[47] California Streets and Highways Code § 5898.17

these disclosures and notices already exist in the PACE industry, additional disclosures are unnecessary.

It is the FHFA's very policy of not allowing the Enterprises to purchase a mortgage or refinance a mortgage with a PACE assessment that is the cause of any difficulty at the time of sale or refinance, not the existence of a PACE assessment. PACE assessments, as a tax assessment, are designed to transfer to the next property owner, just like all property tax obligations transfer to the next property owner. This complication could be remedied by the FHFA reversing its current policy, which is unwarranted due to the fact that PACE assessments improve the underlying collateral of the Enterprises' assets and portfolios, and allowing the Enterprises to purchase and refinance mortgages on properties with PACE assessments.

Question 8: *The Consumer Financial Protection Bureau published and received comment on an Advanced Notice of Proposed Rulemaking on disclosures under the Truth in Lending Act, as required by section 307 of the Economic Growth, Regulatory Relief and Consumer Protection Act, PL 115-174 (2018). The ANPR addresses, in line with the statute, TILA sections relating to ability to repay requirements and to application of civil money penalty provisions for TILA violations. FHFA seeks input on matters beyond the scope of the statutory and regulatory provisions addressed by the CFPB. For example, do consumers face issues regarding the tax treatment of PACE loan payments and reporting to consumers of deductible versus non-deductible expenses? Are there consumer impacts from PACE liens on title searches? What impacts might arise where local governments use structures such as an unelected Joint Powers Authority that limit government responsibility for PACE program administration? What options exist for a homeowner who can no longer afford to repay a PACE lien, such as a tax deferral by the taxing authority? What issues arise from the use of approved contractor lists and the impact on costs, contractor regulation, and recourse for consumers for defective equipment? What issues may arise from notification practices regarding PACE liens at time of property sales and other issues that align with or expand on consumer related concerns raised by the CFPB?*

Ygrene provides written notice, as required by California statute (added by Assembly Bill 2693 in 2016), to property owners that they should consult a tax advisor with respect to any tax matters relating to their PACE financing. The property owner is required to initial this disclosure. Ygrene has incorporated this practice in all residential PACE agreements in every state where Ygrene administers a PACE program.

Typically, PACE programs are formed or overseen by Joint Powers Authorities (JPAs) local government boards, or agencies formed by cities and counties for specific public purposes. Members of the PACE program JPAs or boards are elected officials or appointees who establish program guidelines, operating requirements, and consumer protection standards and are responsible for administering the program or overseeing a third-party administrator under contract to the PACE program board. This is in addition to the various federal and state regulatory and legislative requirements. Further, all PACE Program Administrators operate at the will of the local cities and counties that enable the PACE program through ordinance or resolution. At any point in time, a local government can choose to suspend participation in a PACE program operated through a Joint Powers Authority or PACE board.

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When homeowners approach Ygrene regarding inability to repay PACE liens, Ygrene works in good faith with those homeowners to achieve an appropriate solution.

PACE far exceeds any other form of home improvement financing with regard to contractor vetting, oversight, and monitoring. Assembly Bill 1284 passed in 2017 requires the following with regard to PACE contractors as provided by section 22680 of Division 9 of the California Financial Code:

(a) A program administrator shall establish and maintain a process for enrolling PACE solicitors, which shall include both of the following:
    (1) A written agreement between the program administrator and the PACE solicitor, which shall set forth the obligations of the PACE solicitor and its PACE solicitor agents.
    (2) A review of readily and publicly available information regarding each PACE solicitor.
(b) A program administrator shall establish and maintain a process for enrolling PACE solicitor agents, which shall include a background check of each PACE solicitor agent. A program administrator may rely on a background check conducted by the Contractors' State License Board to comply with this requirement.
(c) A program administrator shall not enroll a PACE solicitor or a PACE solicitor agent that does not satisfy at least one of the following criteria:
    (1) Maintain in good standing a license from the Contractors' State License Board.
    (2) Maintain a registration in good standing with the Contractors' State License Board as a home improvement salesperson.
    (3) Be exempt from, or not subject to, licensure or registration under the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code).
(d) A program administrator shall not enroll a PACE solicitor if, as a result of the review conducted as part of the program administrator's enrollment process, the program administrator finds any of the following:
    (1) A clear pattern of consumer complaints about the PACE solicitor regarding dishonesty, misrepresentations, or omissions.
    (2) A high likelihood that the PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law.
    (3) A clear pattern on the part of the PACE solicitor of failing to timely receive and respond to property owner complaints regarding the PACE solicitor.
(e) A program administrator shall establish and maintain a process to promote and evaluate the compliance of PACE solicitors and PACE solicitor agents with the requirements of applicable law, which shall include all of the following, at a minimum:
    (1) A risk-based, commercially reasonable procedure to monitor and test the compliance of PACE solicitors and PACE solicitor agents with the requirements of subdivision (a) of Section 22689.

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(2) A procedure to regularly monitor the license or registration status of PACE solicitors and PACE solicitor agents.
(3) A periodic review of the solicitation activities of PACE solicitors enrolled with the program administrator, to be conducted at least once every two years.

(f) A program administrator shall establish and implement a process for canceling the enrollment of PACE solicitors and PACE solicitor agents who fail to maintain the minimum qualifications required by this section, or who violate any provision of this division.[48]

Additionally, under section 22681 of Division 9 of the California Financial Code, contractors receive comprehensive training on PACE financing as part of the enrollment process:

> A program administrator shall establish and maintain a training program for PACE solicitor agents, which is acceptable to the commissioner.
>
> (a) A program administer shall require each PACE solicitor agent to complete an introductory training that addresses the topics listed in subsection (b) as part of the program administrator's enrollment process for PACE solicitor agents. The introductory training shall require that the PACE solicitor agent pass a test that measures the PACE solicitor agent's knowledge and comprehension of the training material. The introductory training shall not be subject to any minimum duration requirements.
>
> (b) In addition to the introductory training, a program administrator shall require that each PACE solicitor agent complete six hours of education provided by the program administrator within three months of completing the program administrator's enrollment process. The training shall include the following topics:
>
> (1) PACE programs and assessment contracts.
> (2) PACE disclosures.
> (3) Ethics.
> (4) Fraud prevention.
> (5) Consumer protection.
> (6) Nondiscrimination.
> (7) Senior financial abuse.[49]

Ygrene has adopted these or similar practices for all residential PACE contractors enrolled in its programs in all states where Ygrene administers a program. The residential PACE industry has also adopted similar practices in other states with residential PACE. In fact, no other financing option in the home improvement industry has more comprehensive contractor vetting, training, and oversight than PACE. PACE is one of the safest forms of home improvement financing and further reduces risks to the Enterprises' portfolios and underlying assets as a result

[48] California Financial Code § 22680
[49] California Financial Code § 22681

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of poorly performed home improvement work utilizing other financing options with fewer consumer protections.

Question 9: *What information regarding experiences under programs of the Department of Housing and Urban Development relating to PACE may be relevant for consideration by FHFA in its evaluation of public input? Where PACE programs create super-priority liens, should loan products issued or guaranteed by the government, such as Federal Housing Administration mortgage insurance, consider adjustments such as risk based mortgage insurance premiums or limits on partial or assignment claims or the availability or terms of modifications allowable? Should government programs, such as those of FHA, contemplate further limiting the availability of mortgage insurance in PACE jurisdictions for forwards, HECMS or both? Are there improvements that government programs could undertake, such as FHA increasing utilization of its "green" insured mortgages or its Section 203(k) rehabilitation mortgage insurance program to avoid the risks associated with PACE programs?*

Similar to Ygrene's response to questions 1-4, the overwhelming evidence that PACE improves property values, reduces natural disaster-related property damage and displacement costs, lowers home operating costs through utility and insurance premium savings and thereby reduces risk to the Enterprises' portfolios counters the need for any adjustments. There is nothing in the available data that indicates a disproportionate benefit to properties with mortgages backed by FHA versus FHFA programs. Furthermore, since PACE policies and underwriting criteria are compatible, in certain cases, with products such as forwards and HECMS it is not necessary to contemplate limiting the availability of mortgage insurance in PACE jurisdictions. To the extent there are quantifiable justifications for targeted limits, it would seem prudent to also consider any applicable policies already in place with regard to PACE assessments and properties with forwards and HECMS.

The measures contemplated by the RFI are unsound as matter of federal housing policy and also raise substantial legal and Constitutional concerns

For the reasons discussed above, the measures contemplated by the RFI are unsound as a matter of federal housing policy and also raise substantial legal and Constitutional concerns including the following: (i) the FHFA's Charter does not authorize the measures; (ii) the measures would be arbitrary and capricious and thus would violate the Administrative Procedures Act ("APA"); and (iii) the measures, if adopted, would raise substantial concerns under the Tenth Amendment and principles of federalism.

The measures proposed by the RFI are beyond the FHFA's authority because they have no demonstrable link to the safety and soundness of the Enterprises. The FHFA – like any administrative agency – is bound to operate within its Congressional mandate.[50] This means that

[50] *See Whitman v. Am. Trucking Associations*, 531 U.S. 457, 471, 121 S. Ct. 903, 911 (2001) (finding that the "statutory and historical context" around the Clean Air Act barred the EPA from considering costs when setting certain clean air standards); *Massachusetts v. E.P.A.*, 549 U.S. 497, 534-35, 127 S. Ct. 1438, 1463 (2007) (finding

regardless of how expansively an administrative agency views its regulatory authority or "how serious the problem an administrative agency seeks to address, . . . it may not exercise its authority in a manner that is inconsistent with the administrative structure that Congress enacted into law."[51] The FHFA's Charter[52] outlines the contours of the agency's authority to regulate the Enterprises.[53] In establishing the FHFA, Congress envisioned an agency with "the authority to establish capital standards, require financial disclosure, prescribe adequate standards for books and records and other internal controls, conduct examinations when necessary, and enforce compliance with the standards and rules that it establishes."[54] Consistent with that vision, the Charter authorizes the FHFA "to ensure that each regulated entity operates in a safe and sound manner."[55] It further authorizes the FHFA to "issue any regulations, guidelines, or other orders necessary" to carry out its duties.[56]

The FHFA lacks authority to take the proposed actions in the RFI because those actions are untethered to the safety and soundness of the Enterprises. The FHFA states at the outset of the RFI that it is acting as "regulator for Fannie Mae and Freddie Mac" and that the RFI and actions contemplated therein are "based on safety and soundness concerns."[57] The FHFA later reiterates this by stating again that the actions it contemplates "are founded on FHFA's regulatory authorities relating to safety and soundness."[58] Yet, as discussed at length in this comment letter, the FHFA's proposed actions have no demonstrated nexus to safety and soundness concerns because PACE assessments do not negatively impact the Enterprises' underlying mortgage assets or increase financial risks to the Enterprises.

For decades, if not longer, under the laws of all states, property taxes take priority over first mortgage liens in the event of foreclosure. The FHFA objects that this ordinary and long-standing incident of state law, which it has never before sought to undermine, adversely affects the safety and soundness of the Enterprises. As noted already, the FHFA supplies no data that PACE inherently has had, or will have, the posited adverse effect on safety and soundness, particularly in light of measures already taken.

To avoid the hypothesized but unsubstantiated risk, the measures contemplated in the RFI would increase the cost of new home mortgages in PACE-enabled states without regard to

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that EPA's "refusal to decide whether greenhouse gases cause or contribute to climate change" was impermissible because the agency did not "ground its reasons for action or inaction in the" in the Clean Air Act).

[51] *FDA v. Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 125. 120 S. Ct. 1291 (2000) (internal quotations omitted) (finding that Congress had not authorized Food and Drug Administration (FDA) to regulate tobacco as a drug under the FDA Act); *see also Am. Lib. Ass'n. v. F.C.C.,* 406 F.3d 689, 708 (D.C. Cir. 2005) (finding that Congress did not authorize F.C.C. to regulate a wide range of consumer electronic devices capable of transmitting wire or radio communications notwithstanding the F.C.C.'s claim of broad authority to regulate equipment used for such transmissions).

[52] 12 U.S.C. § 4501 *et seq.*

[53] *See* 12 U.S.C. § 4502(20) (defining regulated entity to include the Enterprises and any Federal Home Loan Bank).

[54] 12 U.S.C. § 4501(6).

[55] 12 U.S.C. § 4513(a)(1)(B)(i).

[56] 12 U.S.C. § 4514a(a); 12 U.S.C. § 4513.

[57] FHFA RFI pg. 2736.

[58] FHFA RFI pg. 2738-39.

whether the property is or is not encumbered by a PACE lien (or would ever be encumbered by a PACE lien). The contemplated measures thus do not appear tailored to address a specific, quantified risk to the Enterprises; instead, the measures appear to be a tool to bludgeon PACE-enabled states to change state law or suffer reduced homeownership or severe contraction of their housing markets. Given these impacts, and the other factors discussed above, the FHFA's proposed actions cannot be justified on safety and soundness concerns and for that reason are beyond the FHFA's authority.

In addition, the FHFA's proposed actions would violate the APA's prohibition of "arbitrary and capricious" rulemaking. For example, the FHFA proposes "to decrease the loan-to-value ratios for *all new loan purchases* in states or in communities where PACE loans are available"[59] and to "direct the Enterprises to increase their Loan Level Price Adjustments (LLPAs) or require other credit enhancements for mortgage loans or re-financing *in communities* with available PACE financing."[60]

Neither proposal is limited to mortgages on underlying properties subject to PACE assessments, which was the stated concern of the FHFA. Rather, both proposals would affect any mortgage in a state or community that has a PACE program. Both proposals would have severe negative effects on all home values in the state or community, significantly hinder the ability of all residents to sell their homes and obtain financing, and cause other economic damage. This would be a classic case of "arbitrary and capricious" rulemaking under the APA.

Finally, even if the FHFA's proposals could pass muster under the APA, they would violate core principles of federalism and the Tenth Amendment of the United States Constitution. In *New York v. United States*, the Supreme Court concluded that although Congress may in some cases offer incentives to states to take certain actions, Congress may not coerce states to take certain actions under the Tenth Amendment.[61] In that case, the Court struck down a law coercing the states to either accept ownership of nuclear waste or regulate the waste according to instructions from Congress.[62] The Court reasoned that this aspect of the law "crossed the line distinguishing encouragement from coercion."[63] Furthermore, the Tenth Amendment and principles of federalism circumscribe the authority of the federal government to impede a legitimate exercise of state and local governments' authority to make policy decisions, including those involving an exercise of taxation powers.[64]

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[59] FHFA RFI pg. 2739 (emphasis added).
[60] FHFA RFI pg. 2739 (emphasis added).
[61] 505 U.S. 144, 175 (1992) (finding unconstitutional an effort by Congress to "'commandeer' state governments into the service of federal regulatory purposes," which would be "inconsistent with the Constitution's division of authority between federal and state governments").
[62] *Id.* at 174-175.
[63] *Id.* at 175.
[64] "That the power of taxation is one of vital importance; that it is retained by the States; that it is not abridged by the grant of a similar power to the government of the Union; that it is to be concurrently exercised by the two governments: are truths which have never been denied." *Arkansas v. Farm Credit Svcs. of Cent. Arkansas*, 520 U.S. 821, 826, 117 S. Ct. 1776, 1780 (1997) (quoting *McCulloch v. Maryland,* 4 Wheat. 316, 425, 4 L.Ed. 579 (1819)) (internal quotations omitted).

The FHFA's proposed actions cross the line into coercion and thus would be impermissible under the Tenth Amendment. Numerous state legislatures have enacted legislation enabling PACE programs. As described further above in the comment letter, PACE programs involve tax assessments and, in particular, the longstanding policy of every state in the union that gives first priority to property tax assessments. As the Supreme Court of the United States has repeatedly recognized, the taxing authority of a state – and a state's ability to protect its right to collect taxes – goes to the essence of its sovereignty. State and local governments have decided to create PACE programs under their general police powers and to protect assessments arising from the exercise of those powers in the same way that they treat all other property taxes. The proposed measures not only would harm the homeowners in, and housing markets of PACE-enabled states like Florida and Missouri, they are also an affront to the sovereignty of such states, which is prohibited by our federalism.

The FHFA's proposed actions would impermissibly coerce the states by offering state and local governments a feigned "choice": (i) change the priority status accorded to state property taxes or (ii) suffer the crippling negative impact on the residential housing markets and economies in their states and localities. To illustrate the magnitude of the Enterprises' impact, according to the United States Government Accountability Office, Fannie Mae and Freddie Mac securitized and guaranteed about 46% of mortgage originations in 2017.[65] Other data shows that Fannie Mae alone acquired 134,385 mortgages in Florida in 2018.[66] Fannie Mae also reported that more than 50% of all single-family owner-occupied home purchase loans were made to first-time homebuyers.[67] Several actions proposed by the FHFA would penalize all home buyers and residential home owners in states with active PACE programs by, for example, seeking to lower the LTV ratios for all loans.

Faced with this "choice," which is not a choice at all, the FHFA would force state and local governments with PACE programs to fundamentally alter their tax regimes. The Tenth Amendment and principles of federalism prohibit the FHFA from taking such actions.

Not only is such coercion impermissible, but the actions that the FHFA proposes in the RFI will impermissibly target only states that have residential PACE programs. A federal agency generally cannot single out specific states for regulation, policy decisions, or other actions that do not have nationwide application without violating the Tenth Amendment or principles of equal sovereignty among the states. The federal government is obligated to respect the "fundamental principle of equal sovereignty."[68] This means that, except when "justified by exceptional conditions" (such as to redress racial discrimination and protect citizens' right to

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[65] GAO Highlights, January 2019, at 1, available at https://www.gao.gov/assets/700/696516.pdf.

[66] Fannie Mae, 2018 Annual Housing Activities Report & Annual Mortgage Report, at 41, available at https://www.fanniemae.com/resources/file/aboutus/pdf/2018ahar.pdf.

[67] *Id.* at 6.

[68] *Shelby Cty. v. Holder*, 570 U.S. 529, 544, 133 S. Ct. 2612, 2623 (2013) (internal quotations omitted) ("[A] departure from the fundamental principle of equal sovereignty requires a showing that a statute's disparate geographic coverage is sufficiently related to the problem that it targets." (internal citations and quotations omitted)).

vote), the federal government *cannot* selectively impose burdens on some states, but not on others.[69] Here, the FHFA RFI posits taking actions that only affect those states with active PACE programs, including Florida and Missouri, which is not permissible. Furthermore, this selective pattern of wreaking havoc on certain housing markets is inconsistent with the Congressional directive to the Enterprises to "promote access to mortgage credit *throughout the Nation* (including central cities, rural areas, and underserved areas) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing."[70]

Conclusion

The evidence, data, and research detailed in this letter, contrary to the claims made in the RFI, establishes that PACE improvements do not pose a threat to the Enterprises' portfolios, the underlying assets in the Enterprises' portfolios, or the financial stability of the FHLBs. Nor does the mere availability of senior lien residential PACE pose any risks to the Enterprises or the FHLBs. Rather, as this letter demonstrates, PACE improvements enhance the Enterprises' underlying collateral and reduce risks to the Enterprises' portfolios and the financial stability of the FHLBs.

Fundamentally, PACE programs provide numerous and measurable positive impacts to the Enterprises' portfolio, to the local and state economies where PACE programs are enabled, to the local and state environments and the global environment as a whole, and to the safety and security of homeowners and communities across the country. The states that have exercised their authority to enable PACE programs recognize these benefits and, as declared in statute, state that PACE serves the public interest. These benefits include:

- PACE, as established and declared by state statute, serves the public interest and provides public benefits;
- PACE has sound underwriting standards and comprehensive consumer protections, which reduces risk to the Enterprises;
- PACE improvements increase the value of homes and therefore increase the value of the Enterprises' underlying collateral while reducing the risk of portfolio losses in the event of foreclosure;
- PACE reduces the risk of catastrophic loss to the Enterprises' underlying collateral as a result of natural disasters thereby reducing the risk of losses to the Enterprises' portfolios;
- PACE substantially reduces the operating costs of homes through utility and insurance premium cost savings thereby decreasing the risk of mortgage delinquency and default;

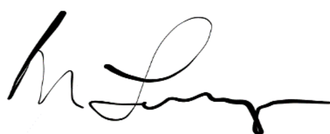
[69] *See Shelby Cty. v. Holder*, 570 U.S. at 545 (internal citations and quotations omitted).
[70] 12 U.S.C. § 1716 (emphasis added).

- PACE-improved properties have lower property tax delinquency rates than properties without PACE thereby reducing the risk of tax foreclosure and subsequent losses to the Enterprises' portfolios;
- California created a PACE Loss Reserve Program to protect mortgage holders from any losses as a direct result of PACE and that reserve has never been tapped;
- Quantifying the net impact of Ygrene PACE financing demonstrates the benefit PACE improvements have on the Enterprises' portfolios; and
- FHFA policy toward PACE is inconsistent with its policy toward all other property taxes and special assessments.

Among other things, the FHFA is considering requiring the Enterprises to increase the minimum downpayment requirements for home loans and/or imposing higher financing costs to borrowers with loans acquired by the Enterprises. These measures would increase the cost of homeownership. The FHFA does not propose to impose these added costs nationwide. Instead, these policies appear designed to increase the cost of homeownership to residents and citizens of only selected states including, among others, California, Florida, and Missouri. The FHFA would impose burdens on these states and risk their economies, as well as the economy of the United States more broadly, to address unsubstantiated safety and soundness concerns to the Enterprises resulting from PACE programs enacted into law by these and other states.

As stated above, the hardship to homeowners and the economic loss to these states and the country resulting from the proposed policies would be substantial, However, the risk to the Enterprises is, at most, theoretical. Indeed, the RFI is striking in its failure to cite any data supporting the existence of actual losses to the Enterprises attributable to the supposed risk from PACE. Further, the measures being considered appear designed to regulate the entire housing markets of the targeted states and thus to use improperly the market power of the Enterprises to coerce these states to yield to the FHFA's will. In fact, based on the evidence provided in this letter, the FHFA's current policy toward PACE is causing measurable harm to the Enterprises' portfolios. Thus, not only should the FHFA refrain from implementing any of the policies considered in the RFI, the FHFA should reconsider its current policy concerning PACE.

Respectfully,



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