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Public Comments on Enterprise Underwriting Standards:=====

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Comment: The Santa Clara County Board of Supervisors objects to the premise of the Notice of Proposed Rule (NPR) that Property Assessed Clean Energy (PACE) programs materially increase financial risks to Fannie Mae and Freddie Mac (the Enterprises), and to the Proposed Rule, which continues to block PACE. The Federal Housing Finance Agency (FHFA) must issue a final rule based on facts, not assertions, and consider the adverse economic impacts of its actions and substantial public interest in PACE. As set out in our attached letter, we propose a responsible alternative that is consistent with the evidence and would allow PACE to proceed.

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September 11, 2012

Mr. Alfred Pollard, General Counsel
Attn: Comments/RIN 2590-AA53
Federal Housing Finance Agency, Eighth Floor
400 Seventh Street, SW.
Washington, DC 20024

Dear Mr. Pollard:

On behalf of the County of Santa Clara, California, Board of Supervisors, I am writing to express our objection to the premise of the Notice of Proposed Rule (NPR) that Property Assessed Clean Energy (PACE) programs materially increase financial risks to Fannie Mae and Freddie Mac (the Enterprises), and to the Proposed Rule, which continues to block PACE. The Federal Housing Finance Agency (FHFA) must issue a final rule based on facts, not assertions, and consider the adverse economic impacts of its actions and substantial public interest in PACE. As set out below, we propose a responsible alternative that is consistent with the evidence and would allow PACE to proceed.

In response to FHFA's Advance Notice of Proposed Rulemaking (ANPR), more than 30,000 comment letters supporting the PACE Program were submitted by state and local governments, federal and state elected officials, banks, real estate developers, energy companies, and organizations representing millions of Americans. Those letters cited numerous studies, articles, legal decisions and other sources providing evidence that PACE increases the value of homes, reduces homeowners' energy costs (thereby making mortgage repayment more likely), grows jobs and economic activity, and helps local governments meet greenhouse gas reduction and clean energy goals. Further, in 2010 a small number of governments with sufficient and unencumbered reserves proceeded with independent PACE Programs (e.g., Sonoma County, Placer County, and the Township of Babylon, New York), and demonstrated a record of statistically negligible default rates supported by professional standards and prudent lending criteria. FHFA must not ignore the substantial weight of the evidence in the record establishing that PACE does not pose material risks to the Enterprises.

This process has also adversely impacted our local citizens and contractors, and delayed a program that was positioned to retrofit at least 500 single-family homes. Not only did this thwart a clear local economic stimulus, but in pilot conducted by our County under ARRA, there is data suggesting that energy efficiency retrofits also produced improved indoor air quality for pollutants that include airborne spores, carbon monoxide, carbon dioxide and, of most concern, particulate matter (PM), defined as airborne combustion-based pollutants that have the potential to significantly impact the elderly, the young, and those with chronic or compromised respiratory systems (including asthmatic children).

FHFA's Proposed Rule is even more draconian and harmful to local government PACE programs than the proposed action cited in the ANPR. In addition to prohibiting the Enterprises from buying mortgages on properties with PACE liens, it allows the Enterprises to make mortgages on such properties immediately due, and would prohibit the Enterprises from consenting to PACE obligations under any conditions. FHFA's Proposed Rule challenges the well-established authority of local governments to finance improvements with a valid public purpose through assessments, and imperils an extremely effective means of creating jobs, ensuring energy security and protecting public health and the environment.

FHFA should adopt a modified version of its Alternative 3 to the Proposed Rule (H.R. 2599 Underwriting Standards). Alternative 3 provides rigorous underwriting criteria and other protections to reduce the risk of default and ensure that PACE-financed improvements add to the value of homes, and sufficiently protects the Enterprises from risk alleged by FHFA. However, as drafted in the NPR, Alternative 3 is not fully workable because it still requires Enterprise consent to local government assessments for valid public purposes, and does not ensure that the Enterprises will indeed consent even if local governments comply with these rigorous underwriting standards. FHFA should therefore adopt a modified version of Alternative 3 as follows:

Provided that all PACE liens are recorded and the Alternative 3 underwriting standards are satisfied, then the Enterprises shall:

1. *not* take actions to make immediately due the full amount of any obligation secured by a mortgage that becomes subject to a first-lien PACE obligation;
2. *be permitted* to purchase mortgages subject to first-lien PACE obligations; and
3. *if requested, consent* to the imposition of a first-lien PACE obligation.

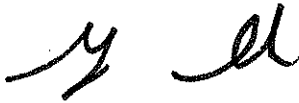
Because we are sensitive to its concerns, we also urge the FHFA, to include in its final rule the option of a modified Alternative 1 (Guarantee/Insurance). We do not expect near-term creation of an insurance product or reserve fund that would protect against "100% of any net loss" as

suggested by FHFA, but reasonably anticipate the emergence of insurance or loan loss reserve instruments in the near future that could provide additional risk mitigation. When effective insurance or risk-mitigation mechanisms become available, local governments should be permitted to choose whether to utilize such products or comply with the Alternative 3 standards.

We welcome the opportunity to work with FHFA to further refine this modified alternative to the Proposed Rule if necessary. FHFA should not close the door to residential PACE when a workable solution is presently available or can be resolved in timely manner through a collaborative stakeholder process.

In sum, FHFA should adopt Alternative 3 to the Proposed Rule (modified as proposed in these comments), and leave the door open to the future use of insurance products or reserve funds that could provide sufficient risk mitigation. This solution enables FHFA to enhance the value of the Enterprises' portfolio while respecting the rights of local governments to protect the public health and safety and allowing this extremely effective engine of job creation to move forward.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Shirakawa".

George Shirakawa
President, Board of Supervisors

c: Santa Clara County Congressional Delegation
Board of Supervisors
Jeffrey V. Smith, County Executive