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By Electronic Mail: RegComments@fhfa.gov

September 13, 2012

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Re: Comments on Notice of Proposed Rulemaking – Enterprise Underwriting Standards Related to Mortgage Assets Affected by PACE Programs; RIN 2590-AA53

Dear Mr. Pollard:

Fannie Mae is pleased to submit these comments in response to the Federal Housing Finance Agency's ("FHFA") Notice of Proposed Rulemaking on Enterprise Underwriting Standards related to mortgage assets affected by Property Assessed Clean Energy ("PACE")[1] programs, dated June 15, 2012 (the "NPR").

PACE programs permit local governments to provide financing for energy-related improvements. A feature of most PACE programs is that the PACE obligations are treated as an assessment levied and collected in the same manner as real estate taxes. As such, they can take priority over a mortgage loan previously originated and recorded as a first lien and expose a mortgage holder to a potential financial loss. PACE loans with the potential to prime first liens are referred herein as "first-lien" PACE loans.

To address the potential risk posed to Fannie Mae and Freddie Mac (the "Enterprises"), FHFA has proposed to: (1) require the Enterprises to take actions necessary to secure and/or preserve their right to immediately make due any obligation secured by a mortgage that becomes, without the consent of the mortgage holder, subject to a first-lien PACE obligation; (2) prohibit the Enterprises from purchasing mortgage loans subject to a first-lien PACE obligation; and (3) prohibit the Enterprises from consenting to the imposition of a first-lien PACE obligation on any mortgage.[2] FHFA refers to these three requirements collectively as the "Proposed Rule."[3]

In the NPR, FHFA is seeking comment on the Proposed Rule and three alternatives to the Proposed Rule that would allow the Enterprises to purchase mortgage loans subject to, or consent to the subsequent imposition of, a PACE obligation while mitigating the risks associated with first-lien PACE programs ("Risk-Mitigation Alternatives"). The Risk-Mitigation Alternatives are: (1) the

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[1] Enterprise Underwriting Standards, 77 Fed. Reg. 36086 (proposed June 15, 2012) (to be codified at 12 C.F.R. pt. 1254).
[2] NPR at 36086, 36107.
[3] As more fully discussed below, the Proposed Rule is substantially similar to current Fannie Mae policy.

guarantee or insurance of the PACE loan; (2) adoption of protective standards; and (3) adoption of underwriting standards patterned after a Congressional bill (HR 2599).

As a general matter Fannie Mae supports the Proposed Rule which is substantially similar to the requirements Fannie Mae has adopted to mitigate the risks posed by first-lien PACE loans. While we have commented on the three proposed Risk-Mitigation Alternatives, we believe that none of the Risk Mitigation Alternatives affords the same degree of protection as does the Proposed Rule from the risk of financial loss posed by first-lien PACE loans. Furthermore, we believe that none of the Risk-Mitigation Alternatives is feasible; at a minimum, each alternative would present significant implementation challenges to Fannie Mae, lenders, and servicers. As a result, we do not believe that any of the Risk-Mitigation Alternatives to the Proposed Rule should be adopted.

A. FHFA's Proposed Rule

We support FHFA's Proposed Rule to mitigate the risk to the Enterprises posed by first-lien PACE obligations. As we previously stated in our comments to FHFA's advance notice of proposed rulemaking on mortgage assets affected by PACE programs (Exhibit 1), we believe that PACE loans (i) increase the frequency and severity of Fannie Mae's losses in the event of foreclosure on the mortgage loan, and (ii) increase Fannie Mae's credit risk on mortgage loans due to increases in a borrower's debt burden without a determination of the borrower's ability to repay the debt.

1. Security Instruments: FHFA has proposed that the Enterprises take actions necessary to secure and/or preserve their right to call due mortgage loans with a first-lien PACE obligation (such as interpreting or amending the uniform instruments).[4]

Fannie Mae supports FHFA's proposed requirement, which is consistent with our existing policies for single-family and multifamily transactions. In Lender Letter 2010-06 (May 5, 2010), we notified single-family sellers and servicers that we interpret the terms of the Fannie Mae/Freddie Mac uniform security instruments as prohibiting loans that have senior lien status to the mortgage, such as PACE obligations.[5] Similarly, after a multifamily property is financed by Fannie Mae, no other liens may be placed on the property.[6]

2. Prohibition on Purchase of First-Lien Mortgage Loans Subject to PACE Obligation: The Proposed Rule would prohibit the Enterprises from purchasing any mortgage subject to a first-lien PACE obligation.[7] For both our single-family[8] and multifamily[9] lines of business, we support this approach which is consistent with our existing lender guidelines and loan eligibility requirements.

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4 NPR at 36086, 36107.

5 Specifically, Paragraph 4 of the uniform covenants in Fannie Mae/Freddie Mac security instruments provides that:

> Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; . . . or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument.

6 For example, the standard provisions of our Multifamily Loan and Security Agreement (Non-Recourse) state:

> Other than Permitted Encumbrances and the lien created by the Loan Documents, Borrower shall not permit the grant, creation or existence of any Lien, whether voluntary, involuntary or by operation of law, on all or any portion of the Mortgaged Property (including any voluntary, elective or non-compulsory tax lien or assessment pursuant to a voluntary, elective or non-compulsory special tax district or similar regime).

7 NPR at 36086, 36107.

8 For single-family mortgage loans, Fannie Mae issued Announcement SEL-2010-12 (August 31, 2010), which provides:

> For PACE loans originated on or after July 6, 2010, we will not purchase mortgage loans secured by properties with an outstanding PACE obligation, unless the terms of the PACE program do not permit priority over first mortgage liens.

9 For multifamily loans, Section 306 of Fannie Mae's *Multifamily Selling and Servicing Guide*, states that in order for the loan to be eligible for Fannie Mae financing:

3. Prohibition on Consent to Borrower Obtaining a PACE Loan in connection with Loans Owned or Securitized by Fannie Mae: The Proposed Rule would prohibit the Enterprises from consenting to the imposition of a first-lien PACE obligation on any mortgage.[10] Fannie Mae supports this proposal, which is consistent with our existing policies. Currently, in single-family transactions we do not consent to borrowers obtaining a PACE obligation with lien priority over Fannie Mae's first mortgage loan (with an exception for certain refinances of mortgage loans subject to a PACE obligation originated prior to July 6, 2010). Similarly, we do not consent to a PACE obligation being given a priority lien in multifamily transactions.

B. Risk-Mitigation Alternatives

FHFA's proposed Risk-Mitigation Alternatives to the Proposed Rule would permit Fannie Mae to purchase mortgage loans subject to PACE obligations or consent to a PACE obligation on a mortgage already purchased. Given the language used and the nature of the alternatives, we presume that FHFA is proposing these alternatives only within the context of the single-family business line. Accordingly, our comments on these alternatives are from the perspective of our single-family business. If alternatives were to be created for multifamily, factors such as multifamily financing structures, processes, procedures, losses, and risk sharing would need to be considered.

1. Risk-Mitigation Alternative 1 – Guarantee/Insurance: This alternative would require that PACE obligations be guaranteed or insured by a qualified insurer, or by the applicable PACE program, against 100% of any net loss[11] attributable to the PACE obligation resulting from a foreclosure (or similar default resolution involving a transfer of the subject property).[12] While this option arguably helps to mitigate risk, there are numerous potential hurdles which argue against its adoption.

First, it is doubtful whether a guarantor or insurer is available or willing to provide the coverage required under this Risk-Mitigation Alternative. By way of comparison, mortgage insurers provide insurance coverage to protect us against the risk of loss resulting from a borrower's default. As such, mortgage insurance is akin to the type of coverage contemplated by this Risk-Mitigation Alternative. Over the past five years, mortgage insurers have experienced significant losses and some mortgage insurers have been placed into receivership by state insurance regulators. We also have observed that it is not easy for new entrants to raise capital and obtain state insurance regulator approval to launch a new insurance company. In light of the forgoing, we question the viability of this Risk-Mitigation Alternative.

In addition, we have concerns about the adequacy of the coverage contemplated by FHFA. However structured, this type of coverage should be based on a concrete claim formula or percentage of total additional risk and not be tied to a measure of the value of the improvement to the property. We also doubt that this coverage could be priced at a point to make it feasible given the unknown loan volume and the fact that PACE obligations typically involve low-balance loans. Further, a guarantor or insurer of this product in all likelihood would establish underwriting standards for PACE obligations, which we would need to analyze as well. Lastly, any insurer or guarantor of this product would need to comply with our applicable counterparty risk requirements. For these reasons, Fannie Mae does not support the adoption of this alternative.

The Property must be free and clear of all encumbrances and Liens that have priority over the Mortgage Loan Lien (other than cable and laundry leases as described in this Chapter). No rights may exist that could give priority to any Lien over the Mortgage Loan Lien, except for real estate taxes and special assessments that are shown in the title policy as Liens not yet due and payable.

[10] NPR at 36086, 36107.

[11] Net loss would be defined to mean the greater of (a) the amount of the outstanding PACE obligation minus any incremental value (which could be positive or negative) that the PACE-funded project contributes to the collateral property, as determined by a current qualified appraisal, or (b) zero. NPR at 36086, 36107.

[12] NPR at 36086, 36107-36108.

2. Risk-Mitigation Alternative 2 – Protective Standards: This alternative would require that loans purchased by the Enterprises and subject to a PACE obligation meet the following five conditions: (a) the PACE obligation could not exceed the lower of $25,000 or 10 percent of the property value; (b) the combined loan to value (CLTV) ratio could not exceed 65 percent; (c) the borrower's debt to income ("DTI") ratio could not exceed 35 percent; (d) the borrower's credit score could not be lower than 720; and (e) the PACE obligation would have to be recorded.[13] We believe that these requirements would help to assure that borrowers are able to make payments on the PACE obligation, but believe that as a practical matter this alternative should not be adopted as it would be operationally difficult for lenders/servicers – and Fannie Mae – to implement

How this Proposal Would Work – We assume the single-family borrower would apply to the servicer for consent to obtain a PACE obligation that potentially will prime Fannie Mae's first-lien mortgage. We anticipate that such a process could be expensive for a borrower because the servicers would charge some type of processing fee to cover the evaluation and out-of-pocket expenses to address borrower requests, including: (a) pulling credit reports to confirm the borrower's credit score and calculate the borrower's DTI ratio; (b) verifying the borrower's income and employment to calculate the DTI ratio; (c) obtaining an appraisal or other property valuation to calculate the CLTV ratio; and (d) receiving and maintaining verification of the recordation of the PACE obligation.

Implementation Challenges for Servicers – We also anticipate that these activities and the analysis of borrower and property eligibility may be difficult for many servicers to perform given these are typically underwriting functions. Servicing staff may not have the requisite knowledge or expertise to conduct these reviews, which are not without risk if improperly conducted. For example, if a servicer fails to properly determine whether a borrower has satisfied these requirements, servicers could be subjected to repurchase or indemnification obligations, which could adversely affect a servicer's standing with Fannie Mae. Without existing systems and processes in place to handle these consent requests and track PACE loans, servicers also would need to add technology solutions, which would require human and financial resources that may not be available. Fannie Mae faces similar challenges, as we do not currently have systems or processes to monitor PACE consents and loan performance.

As a result, Fannie Mae does not support the adoption of this alternative.

3. Risk-Mitigation Alternative 3 – Underwriting Standards (Modeled after HR 2599): This alternative would involve the adoption of a range of underwriting standards patterned after a congressional bill introduced in July 2011, HR 2599.[14] This alternative would be the most burdensome, and many of the contemplated activities are plainly outside the scope of a typical servicer's expertise and normal servicing processes Moreover, this alternative lacks a fundamental requirement for verification of a borrower's ability to repay the PACE obligation. Additionally, from an operational standpoint, this alternative is far more difficult to implement than Alternative 2, and would require significantly more analysis and verification of consent requests for PACE obligations. Our comments on Alternative 2, above, apply to this alternative as well.

Lack of Ability to Repay Assessment – As proposed, there is no assessment of a single-family borrower's ability to repay the PACE obligation, no calculation of the borrower's DTI ratio, and no minimum required borrower credit score. Instead, underwriting requirements for this alternative focus on: (a) an analysis of the borrower's payment history on property-based debt, and property taxes and assessments; (b) verification that the property owner has not filed for bankruptcy within the prior seven years; and (c) confirmation that there are no involuntary liens on the property.[15] We also believe that there are several features of this proposal that have

[13] NPR at 36086, 36108.
[14] NPR at 36086, 36108-36109.
[15] While we do not believe this proposal should be adopted, if FHFA were to do so, we urge FHFA to include underwriting requirements similar to those adopted by the U.S. Department of Housing and Urban Development for its PowerSaver Home Energy Retrofit Loan Pilot Program. See Notice of FHA PowerSaver Home Energy Retrofit Loan Pilot Program, 76 Fed. Reg. 17936 (Mar. 31, 2011).

questionable value (*e.g.,* verification of payment of property taxes for the three prior years, procurement of an energy audit, and determination of energy and water cost savings) that should be eliminated if FHFA were to proceed with this option.

Loan Limits and Borrower Equity – While this proposal would limit the size of the PACE obligation as a percentage of a single-family property value, it lacks an overall dollar cap on the loan, which we believe should be imposed. In addition, the proposed equity of 15 percent – excluding the PACE obligation – is insufficient to mitigate potential credit losses to Fannie Mae. There should be some correlation between the borrower's equity in the property and the amount of the PACE obligation, with sufficient equity remaining to absorb losses in the event of a default and foreclosure.

Responsibilities – In reviewing this alternative, it is not always clear which entities would be responsible for carrying out various requirements. Some of these requirements clearly would apply to a PACE program administrator (or other third-party entity), but it appears that other requirements would apply to the servicer of the mortgage loan. There would need to be a clear delineation of responsibilities with consideration given to which entity has the appropriate expertise and access to information. As the investor on the mortgage loan, we would need to feel confident that a PACE program administrator and/or servicer had the skills, knowledge and staff to verify that a PACE obligation complies with these requirements. To do so, we would need: (i) standardized processes and forms in place that would apply to PACE programs and be used to document compliance; and (ii) some degree of recourse – beyond loan acceleration – against PACE programs for noncompliance, including perhaps a written agreement between Fannie Mae and PACE program administrators. Implementing these requirements with numerous potential PACE program administrators would be extremely burdensome for Fannie Mae.

In sum, Fannie Mae does not support the adoption of this alternative.

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We appreciate the opportunity to provide the foregoing comments to FHFA on the Proposed Rule and each of the Risk-Mitigation Alternatives. We strongly urge FHFA to adopt the Proposed Rule rather than any of the Risk-Mitigation Alternatives for the reasons stated.

If you have questions regarding the matters addressed in this letter, please feel free to contact me at (202) 752-3096.

Sincerely,

Sheila Teimourian

Sheila Teimourian
VP and Deputy General Counsel

Attachment

Exhibit 1

FannieMae

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March 26, 2012

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Re: Comments on Advance Notice of Proposed Rulemaking: Mortgage Assets Affected by PACE Programs; RIN 2590-AA53

Dear Mr. Pollard:

Fannie Mae is pleased to submit these comments in response to the Federal Housing Finance Agency's ("FHFA") Advance Notice of Proposed Rulemaking on Mortgage Assets Affected by Property Assessed Clean Energy ("PACE") Programs[1] dated January 26, 2012 (the ANPR").

PACE Programs permit local governments to provide financing to homeowners for energy-related home improvements. A hallmark of most PACE Programs is that a PACE loan can take priority over a mortgage loan that had been originated as a first lien. Even before FHFA determined that certain PACE Programs present significant safety and soundness concerns to Fannie Mae and Freddie Mac (the "Enterprises"), Fannie Mae had analyzed PACE Program risks and issued guidance to lenders that provided, among other things, it would no longer purchase mortgage loans secured by properties with outstanding first-lien PACE obligations. On February 28, 2011, FHFA directed the Enterprises to "... continue to refrain from purchasing mortgage loans secured by properties with outstanding first-lien PACE obligations."

Pursuant to the ANPR, FHFA requested comments on several issues. The fundamental question (Question 1) is whether conditions and restrictions relating to the Enterprises' dealing in mortgages subject to PACE loans are necessary. FHFA also asks for comments directly related to issues of lien priority (questions 2-4); market options to PACE Programs (Questions 5-8); consumer protections and disclosures (questions 9-13); underwriting standards (questions 14-16); and alternatives to FHFA's existing statements concerning PACE Programs (question 17). In response to FHFA's request for comments, Fannie Mae offers background on its support of energy efficiency efforts and its policies surrounding PACE Programs, as well as a discussion of the most significant risks

[1] 77 Fed. Reg. 3958

associated with PACE Programs.[2] While many of the questions posed by FHFA are directed to participants in the PACE lending industry, our comments below respond to the basic question of whether a restriction on the purchase of mortgage loans secured by properties encumbered by PACE loans is necessary or appropriate by discussing the impact of a priming lien feature on first-lien mortgage holders, the consumer protections and disclosures for PACE loan borrowers, and credit underwriting standards applicable to PACE.

Fannie Mae and Energy Efficiency Financing

Chartered by Congress in 1938, Fannie Mae is a government-sponsored enterprise whose mission is to support liquidity, stability and affordability in the secondary mortgage market. Since inception, the vast majority of Fannie Mae's business is to acquire first lien mortgage loans. In 2011, Fannie Mae purchased or guaranteed approximately 2,680,000 single-family first lien loans, many of which are secured by properties located in jurisdictions where PACE Programs have been authorized.

Fannie Mae supports energy efficiency in residential housing and encourages the development of viable financing and securitization opportunities that do not place undue risk on lenders, investors or borrowers. Since the 1970s, Fannie Mae has allowed consideration of energy efficient improvements in a variety of manners, including the calculation of debt-to-income ratios for mortgage loans eligible for sale to us. Currently, Fannie Mae allows borrowers to finance the cost of energy efficiency improvements, within limits, as part of the purchase or refinancing of their property.[3] In addition, Fannie Mae is participating in the U.S. Department of Housing and Urban Development's FHA PowerSaver Program by purchasing PowerSaver loans. Fannie Mae recognizes the need for programs to help homeowners fund energy efficiency improvements, but we believe such programs can be successful without altering the lien status of first mortgages.

Fannie Mae and PACE Programs

In early 2009, Fannie Mae began monitoring PACE Programs. Of immediate concern to Fannie Mae was that PACE loans generally have lien priority over mortgage liens. Because of significant risks associated with this aspect of PACE Programs, on September 18, 2009, Fannie Mae issued Lender Letter 07-2009 informing its sellers and servicers about PACE Programs and instructing servicers to advance funds when necessary to keep any known PACE loan current to protect Fannie Mae's lien priority. At the time Lender Letter 07-2009 was issued, approximately 10 states had PACE enabling legislation.

Throughout the remainder of 2009 and into 2010, Fannie Mae continued to monitor the rapid adoption of PACE Programs. By the end of 2010, more than 20 states had enacted PACE legislation, giving rise to PACE Programs in more than 200 localities in California

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[2] For purposes of this comment letter, references to PACE loans shall be those that attain first lien position unless otherwise noted.

[3] Fannie Mae Selling Guide, Section B5-3.3-01

alone. Of additional note was the considerable risk PACE loans posed to consumers, including interest rates significantly higher than market for secured loans.

Upon full review of identified risks, the increasing volume of localities adopting PACE Programs, as well as extensive discussions with FHFA, energy advocates and mortgage lenders, Fannie Mae determined that PACE Programs would potentially increase the frequency and severity of its credit losses. To mitigate these risks, Fannie Mae issued Announcement SEL-2010-12, dated August 31, 2010, which informed lenders that Fannie Mae would no longer purchase loans secured by properties with outstanding PACE loans originated on or after July 6, 2010. This Announcement assured borrowers who obtained a PACE loan that Fannie Mae would waive the uniform security instrument prohibition against such loans if we purchased the mortgage loan before July 6, 2010.

Significant Risks Associated with PACE Programs

Fannie Mae believes that it is appropriate and necessary for FHFA to impose conditions and restrictions on our dealings in mortgages secured by properties subject to loans made under PACE Programs. There are significant risks associated with PACE Programs because of the potential to increase the frequency and severity of credit losses to Fannie Mae (or any other mortgage loan investor), as well as other possible adverse consequences for borrowers. The most significant risks derive from the lien priority of PACE loans, potential increases in loss severity as a result of PACE loans, and increases in credit risk because of the limited assessment of a borrower's ability to repay a PACE loan.

Lien Priority of PACE Loans

PACE loans are afforded the same statutory lien priority as real property taxes and special assessments. This means they may attain priority over any other mortgage lien against the property, including first mortgage liens that were recorded prior in time to the PACE loan. If a borrower defaults on a PACE loan, the PACE lender can effectively "step ahead" of the first mortgage holder by foreclosing on the borrower's property. The foreclosure process also eliminates, or "wipes out" all subordinate liens against the property, potentially transforming Fannie Mae's mortgage loan into an unsecured loan. As noted above, Fannie Mae instructed servicers to advance funds for known delinquent PACE loans in order to maintain lien priority, effectively making Fannie Mae a guarantor of PACE loans.

Although real property taxes pose similar risks to Fannie Mae, there are ways to manage these risks that are simply not effective in the PACE context. Real estate taxes are known and accounted for at the time of mortgage origination. As a result, a mortgage lender can factor the tax payment into its underwriting analysis of the borrower's ability to repay the loan. The underwriting essentially acts as a backstop to ensure that the borrower will be able to pay the taxes, and to protect the first lien status of Fannie Mae's loan. In addition, the mortgage lender can escrow an amount each month to pay the tax bill on the borrower's behalf, further decreasing the likelihood of a tax lien arising and attaining priority over the mortgage lien.

In contrast, PACE loans may be originated at any point during the term of a mortgage loan without the knowledge of the current servicer or investor, making escrowing for PACE loans practically impossible. Moreover, because PACE lenders do not generally consider the borrower's ability to repay the loan, the risk of default is higher than on other secured loans, which in turn increases the risk that existing mortgage loans will be subordinated and wiped out.

<u>Increase in Loss Severity</u>

PACE loans would increase the severity of Fannie Mae's losses in the event of foreclosure on the mortgage loan. Subsequent owners of PACE-encumbered properties are liable for continuing payments on the PACE loan. In selling real estate owned (REO), Fannie Mae will need to: (i) cure any arrearages on the PACE loan and keep it current to convey clear and marketable title to a purchaser; and (ii) in Fannie Mae's opinion, pay off the entire amount of the PACE loan to attract purchasers, given the number of properties on the market which are not encumbered by PACE loans. In at least one state, the amount of a PACE loan can be up to 40% of the value of the underlying property.[4] It is not difficult to imagine that paying off a PACE loan, or even curing arrearages, could significantly increase Fannie Mae's cost to dispose of the REO.

<u>PACE Loans Increase Fannie Mae's Credit Risk on Mortgage Loans.</u>

PACE loans also concern Fannie Mae because they alter the credit risk attributes of Fannie Mae-acquired mortgage loans. A PACE loan increases a borrower's debt burden with little, if any, consideration of the borrower's ability to repay the PACE loan. Features of PACE Programs vary widely, but may include double digit interest rates, property-based lending with little or no consideration of the borrower's ability to repay the loan, and the complete absence of compliance with federal and state consumer protection laws, such as the Truth in Lending Act. One Colorado program specifically noted in its consumer communications that PACE was a good option for borrowers who "[a]re not likely to qualify for a lower-interest loan through a private lender (e.g. home equity loan) due to less-than-excellent credit or lack of equity." This lack of robust underwriting standards is inconsistent with the requirements of the Mortgage Reform and Anti-Predatory Lending Act of the Dodd-Frank financial reforms and proposed implementing regulations, which require creditors to determine a borrower's ability to repay a loan secured by a lien on a borrower's dwelling without regard to the consumer's equity in the dwelling.[5]

PACE Programs' lack of uniform, prudent and customary lending practices increases the risk that the borrower will default on the PACE loan. As indicated above, a default on a PACE loan will have a negative impact on Fannie Mae's mortgage loan. Prudent lending

[4] N.M. Stat. Ann. § 4-55C-1
[5] 15 U.S.C. §1639c

standards are employed to minimize risk to the lender as well as to the borrower. Fannie Mae requires lenders to carefully evaluate a borrower's ability and willingness to repay the loan, and determine the adequacy of the property to serve as collateral for the debt. Among the factors reviewed include the borrower's credit history, total debt obligations, employment, income and appraised value of the property.

PACE Programs, in contrast, typically rely primarily on the property for assurance of repayment rather than on the borrower's demonstrated ability to repay the loan. PACE loan applications are commonly approved without determination that the prospective borrower has a source of income to pay monthly housing expenses and other obligations. For example, the Sonoma County Energy Independence Program specifically states that qualification is not dependent on the consumer's income. In such cases, there is no assurance that the borrower has adequate resources to make timely payments on the PACE loan, increasing the likelihood that the PACE lender will have to rely on the collateral, i.e., foreclose, to obtain repayment of the debt.

Conclusion

Fannie Mae continues to support energy efficiency in residential housing. However, PACE Programs with first-lien priority features have the potential to increase losses to Fannie Mae and place undue risk on lenders, investors, and borrowers. For these reasons, Fannie Mae supports FHFA's position on PACE Programs.

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Fannie Mae very much appreciates the opportunity to provide the foregoing comments to FHFA.

Sincerely,