American Bankers Association
Consumer Mortgage Coalition
Housing Policy Council of the Financial Services Roundtable
Independent Community Bankers of America
Mortgage Bankers Association

September 13, 2012

Mr. Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
400 Seventh Street, S.W., Eighth Floor
Washington, D.C. 20024
RegComments@fhfa.gov

Re: Comments: RIN 2590-AA53

Dear Mr. Pollard:

The undersigned are pleased to have the opportunity to submit comments on the Federal Housing Finance Agency's ("FHFA") proposed rule on enterprise underwriting standards relating to property assisted clean energy ("PACE") programs.

After reviewing the comments on an advance notice of proposed rulemaking, FHFA proposes a rule relating to PACE programs as they impact Fannie Mae and Freddie Mac (the "GSEs"). FHFA proposes to require the GSEs to secure their rights to accelerate loans on properties that become subject to a PACE lien without the mortgage holder's consent. In addition, FHFA proposes to prohibit the GSEs from purchasing mortgage loans on properties on which there is a PACE first lien. Finally, FHFA proposes three risk mitigation alternatives.

While we appreciate the extent to which FHFA has explored alternatives that would remove the risks of PACE loans, we cannot support them. The risk mitigation alternatives would provide varying degrees of protection for taxpayers and for consumers. However, none would address who would pay the cost of implementing them. It appears that they would impose additional duties on servicers without providing reimbursement.

It is also not clear whether the Consumer Financial Protection Bureau ("CFPB") has had the opportunity to address the predatory mortgage lending aspects of PACE loans, which we believe are unacceptable, as currently designed. We would encourage the FHFA to consider the potential predatory lending abuses that may result from PACE loans, along with the CFPB. At a minimum, we believe the ability-to-repay rule required by the Dodd-Frank Act should apply to residential PACE loans.

Even if all the consumer protections issues were resolved and even if servicers could require compensation for their PACE-related services, the fact remains that PACE liens often take priority over preexisting mortgage liens. Therefore, we cannot support the PACE loan program.

PACE Loans

PACE programs are a method of financing energy retrofit equipment installations on real property. These programs are the 2012 version of the aluminum siding door-to-door sales programs that occurred in the late 1960s to the detriment of many borrowers. Under a typical PACE program, a municipality lends funds, often raised by issuing municipal bonds, to real property owners for energy retrofit purposes. Property owners repay the PACE loans over a number of years, typically 15 or 20 years, during which they pay interest. Generally, the loans are not prepayable. The municipality collects loan payments through its tax assessments. Like unpaid property taxes, an unpaid PACE loan results in a lien on the property, and that lien usually is a super-lien, meaning it takes priority over preexisting mortgage liens.

PACE municipal bonds are attractive to investors because they are backed by the loan payments that property owners make on the PACE loans. The bonds are also attractive because they enjoy the protections of using the municipality's tax assessment mechanism. Investors are also ensured of receiving their income stream without prepayment, adding to the value of their investment. PACE investors have strong reasons to advocate for more PACE lending. It does not necessarily follow that they are suitable for consumers or that a super-lien in front of a GSE mortgage is protective of taxpayers.

Ignoring Lessons Learned

PACE loans, as currently designed, ignore the lessons learned from the current mortgage crisis:

- Consumers should not obtain mortgage loans they are unable to repay.
- Consumers should not necessarily borrow as much as someone is willing to lend.
- Lenders should bear some risk of loss upon default.
- Tapping equity in a consumer's home for the benefit of a home improvement contractor, without regard to consumer protections, can lead to abuses.
- Consumers should not be deceptively encouraged to default on their mortgage obligations.

➢ ***Consumers Should Not Obtain Mortgage Loans They Are Unable to Repay***

One of the most significant lessons learned from the mortgage crisis is that consumers should not obtain mortgage debt that they are unable to repay. A new requirement that consumer mortgage lenders thoroughly document ability to repay a mortgage loan, without regard to the property value, was a central aspect of the mortgage reforms in the Dodd-Frank Act.

PACE loans finance up to the entire cost of the retrofit project, without considering whether the homeowner can repay the PACE loan in addition to the mortgage. PACE lending is based on the collateral value, regardless of the borrower's ability to repay the loan. For this reason, PACE lenders do not need to underwrite the borrower's credit profile and determine whether the borrower can pay the PACE loan and the mortgage. PACE lenders will not lend more than the property value because they rely on the property for repayment, but they bear no loss if the amount of the PACE loan and the mortgage loan exceed the property value.

This is not a problem to PACE investors because of their lien super-priority, but it is a serious risk to consumers because it increases the risk they will lose their home in a foreclosure.

We question whether the Consumer Financial Protection Bureau ("CFPB") would consider PACE loans to be exempt from all the federal consumer mortgage protections, such as those under the Truth in Lending Act ("TILA"). The simple expedient that PACE loans use an unusual manner of ensuring the investor is repaid should not be enough to entirely ignore all the mortgage lending rules. In economic effect and from the consumer's point of view, PACE loans are mortgage loans. Consumers receive cash up front to make a purchase, in exchange for an obligation to make periodic payments for a length of time, with interest that accrues over time, secured by real property.

We do not believe the GSEs should deal in, or be exposed to, mortgage loans for which the ability to repay has not been adequately documented. Rather than permitting PACE loans to be exempt from the ability-to-repay rule, applying that rule to PACE loans is particularly important because PACE loans increase the risk of default and foreclosure on the non-PACE mortgage loan.

- ***Consumers Should Not Necessarily Borrow as Much as Someone is Willing to Lend***

Another lesson learned from the mortgage crisis is that there is a limit on the appropriate amount of consumer mortgage debt. There can be healthy debate about where that limit is or should be, but there is no reasonable argument that mortgage credit should have no economic limit. From the mere fact that a consumer might benefit from something, such as an energy retrofit project, does not necessarily follow that a lien on the consumer's home is the best way to finance it regardless of the amount of preexisting mortgage debt on the home, but that is exactly the premise of PACE financing.

- ***Lenders Should Bear Some Risk of Loss Upon Default***

We also learned that lenders, brokers, and others arranging a loan should have some risk of loss in the event of default. One of the problems behind the mortgage crisis is that many players had little or no such risk. The inevitable result was widespread defaults.

Investors in PACE municipal bonds will be repaid because they have a super-lien on the property. Contractors who sell and mechanics who install the PACE retrofits get paid up front. None of these parties bears the risk that the PACE loan, or the consumer's mortgage loan, will not be repaid.

At the same time, the addition of a PACE loan on a property that has a mortgage reduces the homeowner's equity in the property immediately, possibly to negative territory. The amount of equity a homeowner has is closely correlated to both the risk of default, and the severity of loss given default. PACE lending puts the risk of default, not on the PACE lender, but on the mortgage lender who did not make the PACE loan. The inevitable result will be yet more mortgage defaults.

- ***Tapping Equity in a Consumer's Home for the Benefit of a Home Improvement Contractor, Without Regard to Consumer Protections, Can Lead to Abuses***

One more of the lessons we have learned is that if unsuspecting consumers have equity in their homes, someone else may be willing to tap that equity for their benefit at the consumer's expense. Some home improvement contractors have taken this approach in the past. A significant concern is that PACE loans may be targeted to those for whom they are least appropriate. If a homeowner with a strong credit profile finds a cost-effective energy retrofit project, that homeowner can finance it in a number of ways, such as by a subordinate mortgage or by unsecured credit. PACE projects, however, are generally not cost effective, which is why more traditional forms of financing are unavailable.

One of the reasons Congress enacted the Home Ownership and Equity Protection Act of 1994 ("HOEPA")[1] was to prevent equity-stripping. PACE loans are just a new form of equity-stripping, a type of predatory lending that has harmed consumers in the past. The only real difference is that in PACE lending, its proponents believe they have found a way around the HOEPA and TILA rules.

- ***Consumers Should Not Be Deceptively Encouraged to Default on Their Mortgage Obligations***

Finally, we have learned that deceptively encouraging mortgage default is harmful. Fannie Mae and Freddie Mac mortgages use uniform security instruments nationwide that state that the borrower defaults on the mortgage if a lien with priority over the mortgage lien is created. The borrower is required to discharge that prior lean promptly. PACE loans often do not permit prepayment because PACE investors do not want to have their investments prepaid, that is, cease to exist. A PACE loan, then is a default on the mortgage loan that predated the PACE lien, and the borrower is not permitted thereafter to discharge the PACE lien to comply with the mortgage.

PACE programs do not make this clear to the homeowner. FHFA points to one program in which potential PACE borrowers are told that the mortgage "may" prohibit the PACE lien, and to another program in which homeowners are told that "FHFA's position" is that the mortgage prohibits the PACE lien. The GSEs' uniform security instruments are unequivocal that PACE liens that take priority over the mortgage lien are not permitted:

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; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal

[1] Home Ownership and Equity Protection Act of 1994, Pub. L. No. 103-325, §§ 151–158, 108 Stat. 2160, 2190-2198 (1994) (codified as amended in scattered sections of the Truth in Lending Act, 15 U.S.C. §§ 1601–1667f).

proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

There is no question that a new, senior PACE lien is not permitted to remain on a property on which there is a Fannie Mae or Freddie Mac mortgage. PACE liens are a default on the mortgage.

Encouraging consumers to read their mortgage instrument is not a sound consumer protection because many will not understand it even if they do read it. Implying to consumers that "FHFA's position" is just an opinion with which consumers can reasonably disagree is misleading, at best. We cannot support government-backed programs that deceptively encourage homeowners to unknowingly default on their mortgage loans, especially in a manner that prohibits them from curing the default.

PACE Loans Misalign Incentives

The reason investors in PACE income streams advocate for them is that the tax assessment payment mechanism assures the investors that they will be repaid regardless of whether the projects are cost-effective. Their incentive is to encourage homeowners to take out the largest PACE loan possible so the PACE investor has the largest future, guaranteed, income stream. PACE investors are not affected if the property value does not increase, or if the retrofit is not cost-effective or is deficient. Likewise, they are not affected if the homeowner takes out an unaffordable PACE loan and loses the home in a mortgage foreclosure.

Under a PACE program, vendors and contractors who earn profits by selling and installing energy retrofits have an incentive to sell these retrofits. Once they make the sale, they are paid and no longer involved. They have an incentive to sell the product with the highest profit margin and get paid immediately regardless of the risks that the product may not work or actually achieve the energy savings that the vendor may advertise.

- ***PACE Loans are Loans, not Taxes***

Boulder County, Colorado argued that PACE liens are sound policy because they "are not significantly distinguishable from special assessment districts in other contexts, including special assessment districts designed to fund septic systems, sewer systems, sidewalks, lighting, parks, open space acquisition business improvements, seismic improvements, fire safety improvements, and even sports arenas."[2] Others made similar arguments. We do not doubt that there are beneficial ways states and municipalities can spend money. Nor do we doubt that some energy efficiency measures might be beneficial.

[2] 77 Fed. Reg. 36086, 36097 (June 15, 2012).

Unlike more traditional special property assessments, however, PACE loans affect individual property owners, one at a time. This is a significant difference because it misaligns the incentives of those involved in the transaction. Property owners elect whether to participate. This fact allows unscrupulous contractors to take advantage of unsuspecting homeowners. This misalignment of incentives is a significant concern in PACE programs, at least as they exist today.

PACE advocates' self-claimed exemption from mortgage lending rules can permit abusive practices to recur. PACE loans are more like mortgage loans than taxes, so the "exemption" from mortgage lending rules is a concern. We suggest that FHFA consult with the CFPB on the applicability of consumer mortgage rules.

Another problem with equating PACE loans with more traditional uses of special assessments is that it requires ignoring the context in which PACE loans are made. They are made based on the *assumption* that the energy project will: 1) be cost-effective; 2) result in less energy use; and 3) increase the property value. In fact, none of these is established.

- ***The Cost of Energy May Decrease***

The town of Babylon, New York argues that PACE programs "will help homeowners stay in their houses by reducing their utility bills while providing a hedge against rising energy costs in the future."[3] Similarly, the Environmental Defense Fund argued that "PACE will simultaneously mitigate other, more significant risks" such as energy price increases, "to yield a net decline in the chance of mortgage default."[4]

These arguments rest on the unsupported assumption that energy costs will increase in the future. Given the recent advances in modern hydraulic fracturing technology and the discovery of large domestic natural gas reserves, the opposite is certainly a realistic possibility, and would defeat the purpose of PACE programs.

This also assumes that energy costs are related to mortgage default rates, a dubious and unsupported prospect. Mortgage default rates are closely correlated with debt-to-income ratios and loan-to-value ratios. Electric bills or gas bills are minor in comparison to income and mortgage payments in most cases, and are generally irrelevant to mortgage default rates.

- ***Energy Retrofits Are Not Necessarily Cost Effective***

Babylon, New York argues that PACE programs "enhance the value of participating homes and, in fact, reinforce, rather than 'impair', the first mortgages."[5] Several others make similar arguments. If PACE retrofits increased property values, the property taxes would also increase proportionately. This would make a mortgage default more likely because the extra tax payments would drain cash away that would otherwise be available to make loan payments.

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[3] 77 Fed. Reg. 36086, 36089 (June 15, 2012).
[4] 77 Fed. Reg. 36086, 36090 (June 15, 2012).
[5] 77 Fed. Reg. 36086, 36089 (June 15, 2012).

Any increase in property value would only benefit a homeowner if the increase were equal to or greater than the cost of the energy retrofit, including the cost of financing the retrofit, and the cost of the increased property taxes from any increase in property value. There is simply no evidence that this is always true.

Home values are influenced by many factors unrelated to the cost of heating and cooling a home. Home values are impacted by supply and demand, including local foreclosure rates, the location of the property, the quality of the schools, access to transportation and employment, the condition of the home, and more. When appraisers determine home values, they look at these and many other factors, but not, except in very unusual cases, at the cost of electricity or water.

PACENow, a staunch supporter of PACE financing, argues that PACE financing solves the two major impediments to energy retrofit projects – high upfront costs and fear that the costs would not be recovered upon a property sale. In other words, PACENow's argument in support of PACE financing is that the retrofit projects are *not* cost effective. *If they were cost-effective, there would be no need for PACE financing.* The energy savings from a cost-effective project would pay for the cost of the retrofit, the cost of traditional financing, and the increased property taxes due to any increased property value.

Also, if the energy retrofits were cost effective, it would be commonplace for homeowners to make the retrofits just before they sell a home because they could recover the cost, and the "resulting" increase in property value, as soon as the sale closes. Fannie Mae and Freddie Mac, who sell foreclosed properties every day, would routinely make energy retrofits on each REO property before putting it on the market. The GSEs would not need PACE financing because they can self-finance more cheaply. Moreover, they have such a large number of properties that they would use their economies of scale to purchase many retrofit products in bulk and install them at a lower cost than individual homeowners pay. Yet, the GSEs have not pursued energy retrofits because, as they well know, it would cost more than it would save.

The fact that pre-sale retrofits are not a widespread occurrence further reinforces what PACENow claims – the upfront cost is high, and the homeowner does not recover the cost upon selling the home.

The fact that energy retrofits are not cost effective for the homeowner reinforces the fact that they are not cost effective for mortgage investors.

- ***The Default Rate on PACE Loans is Irrelevant***

Several commenters argue that PACE loans constitute sound policy because they have a very low default rate. They are a super-lien, so it is expected that they have a low default rate. That is precisely why they are a problem for mortgage investors – the existence of the PACE loan draws away cash that would otherwise be available to make mortgage payments.

FHFA Proposes Alternatives

FHFA proposes a rule with three risk mitigation alternative. While we appreciate the attention FHFA put into its thorough and deliberate consideration of available options, we cannot support any of the alternatives at this time.

The proposed rule would provide:

> (a) The Enterprises shall immediately take such actions as are necessary to secure and/or preserve their right to make immediately due the full amount of any obligation secured by a mortgage that becomes, without the consent of the mortgage holder, subject to a first-lien PACE obligation. Such actions may include, to the extent necessary, interpreting or amending the Enterprises' Uniform Security Instruments.
> (b) The Enterprises shall not purchase any mortgage that is subject to a first lien PACE obligation.
> (c) The Enterprises shall not consent to the imposition of a first-lien PACE obligation on any mortgage.[6]

We agree with FHFA that the proposed rule is reasonable to limit, in the interest of safety and soundness, the financial risks that first-lien PACE programs would otherwise cause the GSEs to bear.[7] We add that it is also reasonable in the interests of consumer protection.

FHFA also proposes three risk mitigation alternatives, to which we now turn.

➢ ***Guarantee or Insurance***

FHFA is considering a risk mitigation alternative under which the GSEs would not consent to PACE obligations unless the obligation would be recorded in land records, and one of the following would be required:

- Repayment of the PACE obligation is irrevocably guaranteed by an insurer the GSEs determine is qualified;
- A qualified insurer insures the GSEs against all losses on the PACE obligation; or
- The PACE program provides a reserve fund, sufficient on an actuarially sound basis, for the benefit of holders of mortgage interests on affected properties.

Recording the obligation in land records is sensible. It is included in each of the three loss mitigation alternatives. However, as with many other aspects of the proposed risk mitigation alternatives, it is not clear who would pay for performing the service or for the recording taxes. We discuss the issue of who would pay for the risk mitigation alternatives more comprehensively below.

Any insurer can fail, no matter how qualified at the outset. Given that some PACE loans are for long terms, this is a significant concern. PACE programs to date do not establish reserve funds to protect mortgage holders, possibly because it would undermine the economics of PACE

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[6] 77 Fed. Reg. 36086, 36107 (June 15, 2012).
[7] 77 Fed. Reg. 36086, 36107 (June 15, 2012).

investments. While that option has potential in the future, it would need to be developed. Any reserve fund would need to be protected against losses and fraud, which would be a significant undertaking.

Again, it is not clear who would pay for the servicer's confirmation that any insurance or reserve were adequate and in place.

➢ ***Protective Standards***

A second proposed loss mitigation option is protection through underwriting standards.

- The PACE obligation would be limited to the lesser of $25,000 or ten percent of the property value;
- The combined loan-to-value ratio would be limited to 65 percent;
- The borrower's documented back-end debt-to-income ratio would be no more than 35 percent;
- The borrower's FICO score would be no lower than 720; and
- The GSEs would treat a home purchaser's prepayment of a preexisting PACE obligation as part of the purchase price in determining loan amounts and in underwriting.

While these underwriting criteria are sensible, it is not clear who would verify them. If the PACE obligation were originated at the same time as a mortgage loan, the PACE requirements could be verified by the mortgage originator. However, that would be a rare occurrence because the purchase of the energy retrofit could simply be combined into the mortgage loan.

In the more likely scenario, a PACE obligation would be sought after the mortgage loan is in place. In this event, the servicer would need to underwrite the PACE obligation. If the servicer did not do so and it were later to be discovered that requirements were not met, the GSE would presumably require the servicer to buy back the mortgage loan. A third party, such as the PACE lender, would have a potential conflict of interest with the GSE and the servicer.

This option does not address the question whether the PACE retrofit is cost-effective. It simply makes it more likely that borrower will be able to afford a possible waste of money.

➢ ***H.R. 2599 Underwriting Standards***

The third option would use underwriting standards set forth in H.R. 2599, the PACE Assessment Protection Act of 2012. This bill would require PACE programs, for residential property, to require a number of protections, including:

- Property taxes on the property must have been current for three years or the property owner's period of ownership, whichever is shorter;
- There must be no involuntary liens on the property in excess of $1,000;
- There must be no default notices and not more than one property-based debt delinquency in the past three years or the property owner's period of ownership, whichever is shorter;
- The property owner must not have filed for or declared bankruptcy in the previous seven years;
- The property owner must be current on all mortgage debt on the property;

- The property title must not be subject to power of attorney, easements, or subordination agreements restricting the owner's authority to subject the property to a PACE lien;
- The property must meet any geographic eligibility requirements established by the PACE program;
- The energy retrofit must undergo an audit or feasibility study that:
  - Is commissioned by the local government, the PACE program, or the property-owner, and must not be more than 90 days old;
  - Was performed by building analyst certified by a specified organization;
  - Includes:
    - Identification of recommended energy conservation, efficiency, and/or clean energy improvements;
    - Identification of the proposed PACE-funded project as one of those recommended improvements;
    - An estimate of the potential cost savings, useful life, benefit-cost ratio, and simple payback or return on investment for each recommended improvement; and,
    - An estimate of the estimated overall difference in annual energy costs with and without the recommended improvements;
- The PACE retrofit must be determined by the local government as one expected to be affixed to the property for the entire useful life of the improvement based on the expected useful lives of energy conservation, efficiency, and clean energy measures approved by the Department of Energy ("DOE");
- The PACE retrofit will be installed by a contractor determined by the local government to be qualified;
- Disbursal of PACE funds is not be permitted unless the property owner submits to the PACE program a written request for disbursement, a certificate of completion, and adequate documentation of all costs to be financed and copies of any required permits;
- The total energy and water cost savings during the useful life of the improvements, as determined by the audit or feasibility study, are expected to exceed the total cost of the PACE assessment;
- The total PACE assessments shall not exceed 10 percent of the appraised value of the property;
- The property owner must have equity of not less than 15 percent of the appraised property value, without consideration of the PACE assessment or PACE retrofit;
- The maximum term of the PACE assessment is the shorter of 20 years or the weighted average expected useful life of the PACE retrofit, consistent with expected useful lives of energy and efficiency measures approved by the DOE.

This would be a reasonable set of criteria to ensure that PACE projects are cost-effective. However, the servicer would not approve any PACE proposal without ensuring all requirements are met in order to avoid a GSE buyback requirement. The servicer could not merely assume that the program requirements are met, even if the PACE program says they are.

Servicers do not have the expertise to verify some of the requirements. Some require understanding energy equipment. For example, the servicer would need to verify that a particular energy retrofit is expected to be affixed to the property for the entire useful life of the improvement based on the expected useful lives of energy conservation, efficiency, and clean energy measures approved by the DOE. Presumably, this would require the servicer to determine that type of equipment and whether it consistent with DOE expectations. Mortgage servicers do not have energy equipment expertise. They would need to either hire staff dedicated to PACE applications, or would need to retain a third party vendor who has the requisite expertise.

Either way, it would be costly for the servicer, but there is no apparent source of reimbursement to the servicer. Unlike the second loss mitigation alternative, this one could not be verified by the originating lender as part of underwriting a mortgage loan because it goes much farther than mortgage underwriting. Without a source of reimbursement for their costs, lenders and servicers will not be able to approve PACE proposals.

➢ ***Remaining Concerns With PACE Loans***

Consumers do not need PACE loans for cost-effective energy retrofits that they are able to afford. Without some protection, PACE loans could become a new form of inappropriate predatory lending. The CFPB has not opined on the applicability of the federal consumer mortgage laws to PACE loans, but that would be advisable.

Super-liens are a risk to any mortgage servicer or investor. No amount of ensuring an energy retrofit is cost-effective, or that the LTV is a certain level, and no amount of consumer protections, will alter this basic fact of mortgage lending. We do not believe FHFA should permit the GSEs to be exposed to the financial risks of super-liens without some sound data on which to estimate the GSEs' future resulting costs.

The responsibility for determining whether any potential PACE loan meets the several criteria would fall largely on the servicer. If FHFA does adopt one of the alternatives, servicers will need either a right to refuse to consider approving any PACE loan, or to be compensated by the PACE borrower for the extra cost of determining whether the PACE loan is acceptable, and of monitoring its future performance. Servicers will need a way of receiving compensation even if, after reviewing a potential PACE loan, the servicer determines not to approve the loan. This cost would need to be included in the calculation of whether the PACE retrofit is cost-effective.

Servicers should have the ability to require payment in full before undertaking their determination process. Servicers need the ability to refuse to consider a PACE project if considering it could put the servicer in jeopardy of noncompliance with any applicable law, such any requirements the CFPB may apply.

Conclusion

We appreciate FHFA's efforts to resolve the several issues surrounding PACE financing, including the risk mitigation alternatives. We remain concerned about the potential for predatory lending under PACE programs, and we encourage FHFA to work with the CFPB on resolving these concerns.

If FHFA adopts one or more of the risk mitigation alternatives, we request that participation not be mandatory for lenders or servicers who are not adequately compensated for the additional burdens the alternatives would place on them. Lenders and servicers should not be required to participate if doing so would risk noncompliance with any consumer protections the CFPB may apply. The best home improvement programs focused on increasing energy efficiency would be those that do not create super-liens or expose the GSEs, investors, and servicers to additional risk, which is today not quantified, and which actually deliver verifiable savings to the consumer.

Sincerely,

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