

**Comments to
The Federal Housing Finance Agency**

**Regarding
Request for Input
for
Property Assessed Clean Energy (PACE) Program**

No. 2020–N–1

Submitted By

**National Consumer Law Center
(on behalf of its low-income clients)**

National Housing Law Project

Consumer Federation of America

Americans for Financial Reform Education Fund

and

National Fair Housing Alliance

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The National Consumer Law Center¹ (on behalf of its low-income clients), National Housing Law Project,² Consumer Federation of America,³ Americans for Financial Reform Education Fund⁴ and National Fair Housing Alliance⁵ thank you for the opportunity to comment on the FHFA's Request for Input regarding Property Assessed Clean Energy (PACE) loans.

We strongly support efforts to strengthen consumer protections on PACE loans and impose comprehensive state and federal regulation that would treat PACE as a mortgage product. PACE loans have pushed many low-income and/or elderly homeowners and borrowers of color into default and foreclosure. PACE loan sales methods foster abuse through practices such as push marketing, closings conducted electronically on tablets and smart phones, and the use of contractors as sales agents. Contractors have often used PACE as a means for entering into abusive and fraudulent home improvement arrangements. Local government sponsorship of PACE programs has been used by front-line contractors and salespeople to lure unsuspecting homeowners into arrangements they believe are government-endorsed, money-saving and advantageous to the homeowner.

¹ Since 1969, the nonprofit **National Consumer Law Center® (NCLC®)** has worked for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. www.nclc.org

² The **National Housing Law Project (NHLP)** is a non-profit law and advocacy center established in 1968 and based in San Francisco, California. NHLP is dedicated to advancing housing justice by using the power of the law to increase and preserve the supply of decent affordable housing, improve existing housing conditions, expand and enforce low-income tenants' and homeowners' rights, and increase opportunities for racial and ethnic minorities. www.nhlp.org.

³ **Consumer Federation of America (CFA)** is a nonprofit association of some 250 national, state, and local pro-consumer organizations created in 1968 to represent the consumer interest through research, advocacy, and education.

⁴ **Americans for Financial Reform Education Fund** is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups. Formed in the wake of the 2008 crisis, we are working to lay the foundation for a strong, stable, and ethical financial system – one that serves the economy and the nation as a whole.

⁵ Founded in 1988, the **National Fair Housing Alliance (NFHA)** is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States. Headquartered in Washington, D.C., the NFHA, through comprehensive education, advocacy, enforcement programs, and neighborhood-based community development programs, ensures the provision of equal access to apartments, houses, mortgage loans, and insurance policies for all residents of the nation. Over 30 years, NFHA has assisted 750,000 victims of housing discrimination; assisted over 700 1st-time homebuyers purchase affordable homes; expanded housing opportunities for millions of consumers; assisted in the creation of 20,000 accessible housing units; assisted more than 200,000 consumers receive financial literacy training; rehabbed 700 abandoned homes; assisted 800 homeowners to avoid foreclosure; facilitated improved maintenance of 750,000 foreclosed properties; and created fair housing education and outreach materials that have reached millions of consumers.

These abusive practices call for strong federal and state regulation and enforcement. Our views on PACE consumer protections are described in comments submitted to the Consumer Financial Protection Bureau,⁶ the California Department of Business Oversight,⁷ and in issue briefs released in September 2017⁸ and November 2019.⁹

We appreciate the FHFA's interest in the developing PACE market and the increased risk it is creating for consumers, mortgage investors, and the housing market. We understand that the super-priority lien position of PACE loans creates difficult risk management challenges for the Enterprises, and we support the FHFA's decision to prohibit Fannie Mae and Freddie Mac from purchasing or refinancing mortgages with PACE liens attached. We also appreciate the public statements made by the FHFA in urging states to adopt robust underwriting standards to protect homeowners.

However, many of the proposals suggested in the FHFA's RFI would place additional burdens on homeowners without addressing the underlying consumer protection issues presented by PACE mortgage loans or furthering the goal of reforming the PACE industry. Instead, they are directed solely at consumers, and narrowly view potential problems to the Enterprises as being caused by consumers. Rather than impose punitive measures on consumers, we believe the FHFA and Enterprises should use their authority and influence over the housing finance market to incentivize PACE lenders and state actors to enhance consumer protections and adopt policies that limit risk to the Enterprises. As discussed more fully in our responses to the RFI questions, the FHFA and Enterprises should:

- encourage the CFPB to issue regulations that apply all of the Truth in Lending Act's home mortgage provisions to PACE;
- encourage states to adopt comprehensive PACE enabling statutes that protect consumers and the Enterprises, such as the Minnesota residential PACE statute;¹⁰
- encourage states to make PACE assessments have subordinate lien status (or undertake measures that would result in a similar outcome);

⁶ National Consumer Law Center and National Housing Law Project, Comments to the Consumer Financial Protection Bureau, Advance Notice of Proposed Rulemaking (May 7, 2019) https://www.nclc.org/images/pdf/energy_utility_telecom/pace/nclc-nhlp-pace-comments-%20may2019.pdf

⁷ National Consumer Law Center and National Housing Law Project, Comments to the California Department of Business Oversight (Jan. 5, 2018), *available at* https://www.nclc.org/images/pdf/energy_utility_telecom/pace/comments-nhlp-cdbo-2018.pdf

⁸ National Consumer Law Center, *Residential Property Assessed Clean Energy (PACE) Loans: The Perils of Easy Money for Clean Energy Improvements* (Sept. 2017), *available at* https://www.nclc.org/images/pdf/energy_utility_telecom/pace/ib-pace-stories.pdf.

⁹ National Consumer Law Center, *Property Assessed Clean Energy (PACE) Loans: State and Local Consumer Protection Recommendations* (Nov. 2019), *available at*: https://www.nclc.org/images/pdf/energy_utility_telecom/pace/ib-pace-nov2019.pdf

¹⁰ See M.S.A. § 216C.437 (effective Aug. 1, 2018).

- work to obtain loss guarantees from states or municipalities; and
- create new consumer financing products for energy efficiency improvements, so that consumers will have viable alternatives to PACE.

1. Should FHFA direct the Enterprises to decrease loan-to-value ratios for all new loan purchases in states or in communities where PACE loans are available? By how much should available loan-to-value ratios be reduced to address the increased risk of such liens being placed on the property and what related implications would result from such actions? Should loan-to-value (LTV) ratios be reduced for all loan purchases sufficient to take into account the maximum amount of a PACE financing available in that community? Should potential future increases in permitted percentage of available PACE financing-to-assessed value be considered?

We do not believe the FHFA should direct the Enterprises to decrease loan-to-value ratios in states or communities where PACE loans are available. We acknowledge that this policy could offer some protection to consumers by deterring some states from adopting residential PACE programs that, like the currently active residential PACE programs, lack sufficient consumer protections. However, for states that are not deterred, this policy would penalize all consumers within the state, the vast majority of whom may never have a PACE loan. We urge the FHFA to reject this LTV proposal and instead take other, more effective steps to limit the impact of PACE loans on the Enterprises, as discussed in these comments.

Decreasing LTV ratios would have the most negative impact on low-income and first-time homebuyers who have limited funds for down payment and closing costs. This action would deny low-income consumers housing opportunities, particularly those in communities of color. It will also deter the Enterprises from meeting their public purposes and from attaining their annual single-family housing goals for home purchase mortgages to low-income families with incomes less than 80 percent of area median income, and to very low-income families with incomes less than 50 percent of area median income.

An LTV reduction would be most unfair in states where PACE loans are available but few loans have been made. For example, while most homeowners in Missouri do not have PACE loans,¹¹ all potential homeowners seeking residential mortgage financing would be affected by a drop in LTV for mortgages purchased by the Enterprises. A state-wide PACE LTV policy would also penalize potential homeowners in local communities that have withheld or withdrawn authority to implement PACE, such as Kern County in California,¹² and Collier County in Florida.¹³ Implementing an LTV policy only on a county or local community level

¹¹ Only about 2,000 residential PACE loans were made in Missouri from 2016 to 2018. *See* Karen Uhlenhuth, “PACE lenders say Missouri consumer protection bills threaten programs,” Energy News Network, Jan. 18, 2019.

¹² Andrew Khouri, “Bakersfield votes to end controversial program that funds home solar panels,” Los Angeles Times, July 20, 2017.

¹³ Laura Layden, “Collier pulls the plug on PACE financing program, at least for now,” Naples Daily News, May 28, 2019.

would not seem administratively feasible for the Enterprises and would likely result in price volatility in the local housing market as between neighboring communities.

If the FHFA nevertheless adopts an LTV reduction proposal, it should create an exemption from the policy for the Enterprises' programs and lending products that are designed to help low-income and very low-income borrowers, such as Fannie's HomeReady, HFA Preferred, and Community Seconds programs.

2. Should FHFA direct the Enterprises to increase their Loan Level Price Adjustments (LLPAs) or require other credit enhancements for mortgage loans or refinancings in communities with available PACE financing? What increased levels would be appropriate for such LLPAs in light of the risks of PACE financing posed to the Enterprises?

For reasons similar to our response to Question 1, we do not believe that the FHFA should direct the Enterprises to increase their Loan Level Price Adjustments (LLPAs). Increasing LLPAs and guarantee fees that are paid by lenders when a loan is acquired by an Enterprise directly affects loan affordability as the fees are passed on to borrowers. LLPAs impose significant costs on homebuyers and are paid by borrowers either as an up-front closing fee or over the life of the loan in their ongoing monthly payments (as a result of a higher loan interest rate). LLPAs disproportionately harm first-time homebuyers and those that cannot afford large down payments, as loans with higher LTV ratios are charged higher LLPAs.¹⁴ Any increase in LLPAs in communities with available PACE financing will place an additional burden on many consumers who will never have a PACE loan, further inhibiting home purchase and refinancing opportunities.

The purpose of an increase in the LLPAs presumably would be to protect the Enterprises from the risk of uncompensated losses due to nonpayment on mortgages they have purchased in which the borrower has incurred a senior PACE lien. While abusive practices involving PACE loans have caused payment problems for PACE mortgage borrowers, especially those who pay the PACE assessment through their mortgage escrow, we are not aware of any data collected by the FHFA or Enterprises on mortgage defaults caused by PACE loans that have resulted in uncompensated losses to the Enterprises. Thus, we believe that any increase in LLPAs would be premature at best until the FHFA and Enterprises have collected sufficient data on defaults and related losses to justify and properly calibrate any increase.

Any risk assessment conducted by the FHFA, before LLPAs could be increased, should also include data collected on the number of properties with Enterprise mortgages that are subject to PACE liens. Many PACE loans are made on properties that do not have an Enterprise mortgage, and therefore pose no risk to the Enterprises. A recent ratings report concluded that approximately 32% of the PACE liens in the securitized pool were secured by properties that are

¹⁴ See Fannie Mae Loan-Level Price Adjustment (LLPA) Matrix, available at: <https://singlefamily.fanniemae.com/media/9391/display>.

subject to an Enterprise mortgage.¹⁵ The FHFA should also consider as part of its risk assessment, for communities in California, the ability of Enterprise lenders to submit a claim with the as-yet untouched PACE Loss Reserve Program administered by the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA).¹⁶

3. Should FHFA consider other actions regarding Enterprise purchase or servicing requirements in jurisdictions with PACE programs?

For the same reasons discussed in our responses to Questions 1 and 2, we do not believe it would be prudent or useful to modify Enterprise purchase requirements in jurisdictions with PACE programs, particularly since such changes would be most likely to adversely affect access to credit for low-income and very low-income borrowers. It would be both prudent and useful, however, to enhance the Enterprises' servicing requirements to provide greater protections to both consumers and the Enterprises.

Specifically, we believe the Enterprises' servicing requirements should direct servicers of Enterprise mortgages in jurisdictions where PACE loans are available to take proactive steps to determine whether a property is subject to a PACE lien, including:

- Flag and promptly investigate the reason for an unusually large increase in a mortgage borrower's escrowed property tax bill from one year to the next, since such an increase indicates the likelihood that a PACE assessment has been added to the property tax bill.
- Compare the current property tax bill to prior year's bills when a mortgage borrower has defaulted on property taxes and the servicer is preparing to set up an escrow impound, and investigate the reason for any unusually large year-over-year increase to determine if a PACE lien has been placed on the property securing the mortgage.
- Monitor any real-time registry or database of PACE loans, as discussed in our response to Question 6 below.

In addition, the Enterprises should require that servicers of Enterprise mortgages in jurisdictions where PACE loans are available have protocols in place to reduce the likelihood of mortgage defaults resulting from PACE assessments. One prime driver of such defaults is the payment shock caused by the delay in the adjustment of a borrower's escrow payment by the servicer. For example, in California, if a PACE borrower's assessment is funded in July 2019, the first assessment payment will not appear on the property tax bill until October of 2020 and

¹⁵ See S & P Global, GoodGreen 2019-1, January 16, 2019 Pre-sale report, available at: <https://www.spratings.com/documents/20184/0/GoodGreen+2019-1.pdf/be5c6474-205a-387d-7b07-b99567202fbc>.

¹⁶ See <https://www.treasurer.ca.gov/caeatfa/pace/index.asp>. The purpose of the Loss Reserve Fund is to "mak[e] first mortgage lenders whole for direct losses as a result of a PACE lien in a foreclosure or forced sale." According to CAETFA's website, the Fund has not received any claims. See <https://www.treasurer.ca.gov/caeatfa/pace/faq.asp#claims>.

will not come due until November 2020.¹⁷ For an escrowed mortgage borrower, that increase in the property tax bill will not be included in mortgage payment until the servicer performs an escrow account analysis. If the anniversary date for the borrower's annual escrow account analysis is in September and the servicer has not performed a short year escrow analysis, the PACE assessment will not be included as an anticipated escrow disbursement amount until the September 2021 escrow analysis. An escrow statement would then be provided to the borrower within 30 days of the completion of the escrow account analysis, and the increased escrow payment would be due 30 to 60 days after the escrow statement is sent, in November or December 2021.

This means that any increase in the borrower's escrow payment that includes the assessment from the July 2019 PACE loan would not show up on the borrower's mortgage statement for two property tax bill cycles (2020 and 2021). The September 2021 escrow analysis would include a deficiency for the 2020 PACE assessment advanced by the servicer as well as a shortage to cover the anticipated 2021 PACE assessment and a payment cushion. The lag time before the assessment is reflected in the consumer's escrow payment would result in a substantial increase in the borrower's monthly mortgage payment, more than two years after the PACE loan was made. That type of payment shock can easily cause a mortgage default, even if the PACE assessment itself would have been affordable to the consumer.

As discussed in our response to Question 5, it often falls on the homeowner to inform the servicer of a new PACE assessment, and most servicers have not been responsive to requests to adjust escrow payments in anticipation of future PACE-related disbursements. We believe that PACE program administrators or local government sponsors should be responsible for notifying mortgage servicers promptly when a PACE assessment has been added to the tax rolls for a mortgagor's property. However, regardless of which party -- borrower, PACE administrator, local government sponsor -- notifies the servicer of a new PACE assessment, it is critical that the servicers adopt policies and procedures that enable them to receive and process such information and quickly adjust the borrower's escrow payment before the escrow account accumulates huge deficiencies and shortages.

By requiring servicers to take the steps described here, the Enterprises would be protecting both consumers and the Enterprises by reducing the risk of PACE-related mortgage defaults and foreclosures.

4. Should FHFA establish safety and soundness standards for the Federal Home Loan Banks to accept as eligible advance collateral mortgage loans in communities where PACE loans are available? How might those standards best address the increased risk of such

¹⁷ In California, PACE assessments funded between July 1 and the next June 30 are placed on the county tax rolls on or before the following August 10, and the first installment is due on November 1. If funding occurs before June 30, the PACE assessment line item will appear on the property tax bill in October of the same year and the first payment will be due in November of the same year. If PACE funding occurs after June 30, however, the PACE assessment line item will not appear on the property tax bill until October of the following year.

collateral? Should such standards be in line with actions that FHFA would undertake for the Enterprises, recognizing the difference in business structures between the Enterprises and the Banks?

For the reasons similar to those discussed in our responses to Questions 1 and 2, we do not believe it would be prudent or useful to establish special safety and soundness standards for the Federal Home Loan Banks' acceptance as collateral of mortgage loans in jurisdictions where PACE loans are available. Such action could end up penalizing the very-low, low- and moderate-income borrowers who currently benefit from mortgage lending and other home-purchase assistance available from FHLB members, such as credit unions and community banks. Moreover, as of September 30, 2019, several years after residential PACE lending started to grow in California and Florida, "the management of each FHLBank believed it had adequate policies and procedures in place to manage its credit risk on advances effectively."¹⁸ Among these policies are robust protections against devaluation of posted collateral, including the obligation to require additional or substitute collateral during the life of an advance, as mandated by the FHLBank Act.¹⁹

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?

If a homeowner has an existing mortgage on the property, we believe that the servicer of the mortgage should be notified when the borrower obtains a PACE loan. As explained in our response to Question 3 above, this is critically important if the PACE assessment is to be paid through an escrow account on the mortgage. PACE programs generally rely upon consumers to provide this notification to mortgage servicers. Our experience is that homeowners often are not able to contact the proper department at the servicer to receive and act on the information. In turn, servicers have not established policies and procedures for addressing issues related to PACE such as requests for adjustments to the escrow payment amount to account for anticipated PACE assessment disbursements.

We believe that any servicer notification requirement should be placed on PACE program administrators or local government sponsors, not homeowners. The FHFA and Enterprises should urge state and local decision makers to incorporate this notification requirement in state PACE enabling legislation or other applicable law. PACE program administrators should be required to develop a portal or some direct line of communication for the parties to easily send and receive the required information. Privacy concerns can be addressed by having homeowners execute appropriate authorizations to release information. Additionally, servicers of Enterprise

¹⁸ See Federal Home Loan Banks Office of Finance Lending and Collateral Q&A (Nov. 13, 2019) at http://www.fhfb-of.com/ofweb_userWeb/resources/lendingqanda.pdf.

¹⁹ See 12 U.S.C. § 1430(e).

mortgages should be notified about PACE loans, and acquire additional loan-level information, through a real-time registry as discussed in Question 6.

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?

As a threshold matter, we want to clarify that PACE assessment liens are regularly recorded in public land records and, once recorded, are available during title searches or other inquiries by the Enterprises and/or mortgage servicers. For example, an online search of the Alameda County (California) Recorder's Online Public Records Portal using the name of one of the government sponsors of a residential PACE program results in a listing of multiple assessment liens recorded on specified properties.²⁰ An online search of the Broward County (Florida) Official Records yields similar results.²¹ However, because PACE assessment liens are sometimes not recorded right away, the FHFA should urge states to mandate the establishment of a real-time registry or database system for tracking both recorded and unrecorded PACE assessments, and require all approved PACE program administrators and local government PACE sponsors to participate in the system. We view this primarily as a consumer protection issue, to address problems caused by loan stacking.

Loan stacking occurs when PACE contractors seek to maximize their income from PACE financing and evade existing loan-to-value limits by returning to a PACE borrower to sell additional products with additional PACE loans, often through a different PACE program administrator. In some cases, a contractor divides up the work for a single project and bids it out to different PACE administrators.

This practice of loan stacking not only evades loan-to-value limits but also undermines any loan affordability analysis conducted by the program administrator. As discussed in our comments to the Consumer Financial Protection Bureau on the PACE Advance Notice of Public Rulemaking,²² the Truth in Lending Act's ATR rules require inclusion of previous PACE loans in the analysis for a new PACE loan. The ATR regulation, which we have urged the Bureau to make applicable to PACE, requires consideration of "[t]he consumer's monthly payment on any simultaneous loan that the creditor knows or has reason to know will be made"²³ The rule also requires the creditor consider mortgage-related obligations and current debt obligations.

²⁰ See <https://rechart1.acgov.org/RealEstate/SearchEntry.aspx>

²¹ See <https://officialrecords.broward.org/AcclaimWeb/search/SearchTypeName>

²² See: https://www.nclc.org/images/pdf/energy_utility_telecom/pace/nclc-nhlp-pace-comments-%20may2019.pdf

²³ 12 C.F.R. § 1026.43(c)(2)(iv).

Including recent PACE loans in a new PACE loan's ATR analysis is challenging if those recent loans have not become part of the public record by the time the new PACE loan is being underwritten. The solution is a real-time registry or database that would include all PACE loans, including those that are not yet recorded.

The registry should include information that is contained in the Notice of Assessment or other similar document that is recorded under state law to confirm the tax lien. For example, a PACE Notice of Assessment in California contains the following information: property owner's name, property address, legal description of property, amount of assessment. The PACE agreement and Exhibits are also attached to the Notice, and they contain interest rate, APR, payment schedule, and prepayment penalty information.

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?

We oppose the proposal to have servicers of Enterprise mortgages give notice to existing borrowers "informing them that, under the terms of their mortgage, PACE liens are not permitted." In our view, Enterprise mortgages do not clearly prohibit borrowers from obtaining PACE loans. While the language of paragraph 4 (entitled "Charges; Liens") of the Uniform Security Instruments would permit the servicer to take certain actions if the borrower fails to pay a PACE assessment, it does not specifically prohibit the borrower from incurring an assessment that would attain priority over the mortgage. Moreover, paragraph 4 does not distinguish between voluntary and involuntary assessments (such as assessment for sewer improvements). Certainly, the FHFA does not take the position that an involuntary assessment that is imposed by a municipality (e.g., for sewer improvements) after an Enterprise purchases a mortgage would violate the terms of the mortgage. Nor does the FHFA instruct Enterprise servicers to require borrowers to promptly discharge an involuntary assessment lien that has priority over a mortgage.

Without specific language addressing voluntary assessments in paragraph 4 (or elsewhere in the Uniform Security Instrument), we believe that servicers of Enterprise mortgages should not represent to borrowers that PACE loans are prohibited by their mortgage documents. We also do not recommend that the FHFA or Enterprises add such language to the uniform security instrument because it will place an unreasonable burden on homeowners, who inevitably will be unaware of the restriction.

Similarly, borrowers with Enterprise mortgages should not be required to execute any additional agreements or certifications "guaranteeing" that they will not accept PACE financing. It would make little sense for servicers of Enterprise mortgages to take action to enforce any

breach of such agreements on performing loans. Thus, we are concerned that they would be enforced selectively and most often at the time borrowers are in need of loss mitigation, as a basis for denying them foreclosure avoidance options. Moreover, such a requirement would unfairly place the burden for compliance primarily on the homeowner, who is unlikely to understand the nature and scope of such a requirement, especially because the lien priority of PACE loans may not be known or understood by the consumer at origination.

Borrowers should be informed about the difficulties that may arise in selling or refinancing a home that has a PACE lien. This information is best conveyed to borrowers before they incur a PACE loan, in both written advance disclosures and in any oral confirmation calls with homeowners. The FHFA and Enterprises should urge state and local decision makers to incorporate this notification requirement in state PACE enabling legislation or other applicable law where it is not already incorporated.

We question whether general notices that would be provided to all borrowers of Enterprise mortgages, in many cases received when borrowers are not even contemplating a PACE loan, will be effective and will provide any meaningful benefit to either borrowers or the Enterprises. If the FHFA adopts this proposal, it will need to ensure that the servicers of Enterprise mortgages adequately educate and train their customer service representatives in responding to borrower inquiries generated by such notices.

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, Public Law 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 nondeductible 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?

As explained in our comments to the Consumer Financial Protection Bureau on the PACE Advance Notice of Public Rulemaking,²⁴ we believe that the Bureau's authority under

²⁴ See https://www.nclc.org/images/pdf/energy_utility_telecom/pace/nclc-nhlp-pace-comments-%20may2019.pdf

TILA to regulate PACE lending goes well beyond the two matters specified in Question 8. For that reason, those comments address in detail the many serious impacts of PACE liens on consumers, including many of the issues and scenarios included in Question 8.

Except as outlined in our responses to Questions 3, 5, 6 and 7, we do not believe that the FHFA is the appropriate agency to directly address most of the consumer protection problems created by PACE lending. Instead, the FHFA should urge PACE program administrators, government sponsors of PACE programs, states where residential PACE programs are authorized and agencies like the Consumer Financial Protection Bureau to take steps to ensure that homeowners considering PACE loans are protected against fraud and misrepresentation, have full information about all of the consequences of taking out a PACE loan, and do not end up with unaffordable PACE loans that then result in mortgage defaults and foreclosures.

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?

For the same reasons discussed in our responses to Questions 1 and 2, we do not believe other loan products issued or guaranteed by the government should undergo changes to insurance premiums, limit the availability of mortgage insurance, or modify or restrict loss mitigation options in jurisdictions where PACE loans are available. Such actions by the FHA, VA and/or USDA/RD would unnecessarily penalize low-income and first time home purchasers, seniors, veterans and families in rural areas. In the absence of data or evidence demonstrating that this type of significant programmatic change would have any appreciable effect on the safety of the FHA Mutual Mortgage Insurance Fund, for example, such measures should be rejected as both excessive and unwarranted.

We believe that creating and marketing new, safer consumer financing products for energy efficiency improvements and improving those that already exist is the most effective way to protect both consumers and the Enterprises from the risks associated with PACE lending. If consumers are made aware of safe, viable alternatives to PACE, they will opt for those alternatives instead, and PACE lenders will have to make their financing product much safer if they want to compete.

Thank you for the opportunity to comment on this Request for Input. For further discussion, please contact:

National Consumer Law Center:	John Rao at jrao@nclc.org Alys Cohen at acohen@nclc.org
National Housing Law Project:	Lisa Sitkin at lsitkin@nhlp.org
Consumer Federation of America:	Barry Zigas at bzigas@consumerfed.org
Americans for Financial Reform: Education Fund	Linda Jun at linda@ourfinancialsecurity.org
National Fair Housing Alliance:	Diane Cipollone diane@cipollonelegalconsults.com