



As we have chronicled earlier on [this blog](#), the Federal Housing Finance Agency (FHFA)'s court-ordered rulemaking on Enterprise Writing Standards for Property-Assessed Clean Energy (PACE) programs resulted in thousands of public comments in response to the Agency's Advance Notice of Proposed Rulemaking (ANPR)—the overwhelming majority in support of PACE. Today is the deadline for submitting comments on the FHFA's [Proposed Rule](#), which directs Fannie Mae and Freddie Mac not to underwrite any residential mortgages subject to first-lien PACE assessments.

The Center for Law, Energy & the Environment at Berkeley Law prepared our own [comments](#) in response to the Proposed Rule. In our comments, we urge FHFA to follow the requirements of the Administrative Procedure Act (APA) in setting its Final Rule, and to carefully consider the existing evidence of economic, environmental, and community benefits from PACE programs. We conclude that the most legally defensible decision would be to adopt the third risk-mitigation as the Agency's Final Rule: allow the Enterprises to consent to first-lien PACE obligations that satisfy the key underwriting standards set forth in H.R. 2599, the PACE Assessment Protection Act of 2011.

We reviewed legal opinions, legislation, and relevant empirical studies—including two by fellow *Legal Planet* contributor [Matthew Kahn](#)—which found that homeowners who install energy efficiency improvements and renewable energy generators are likely to increase the value of their property, benefiting lenders, local communities and homeowners alike. Participants in residential PACE programs also had lower levels of mortgage default than homeowners in the same community who did not participate in PACE programs. Moreover, PACE creates local jobs and enable local governments to meet greenhouse gas reduction, clean air, and energy conservation goals. FHFA must not ignore the weight of the evidence in the record establishing that PACE does not increase risk to the Enterprises and in fact produces important economic, community, and environmental benefits.