

**Proponent Testimony
House Bill 646**

**Sean Brown, Director, Regulatory Affairs
Ohio Credit Union League
sbrown@ohiocul.org | (614) 923-9762**

Chairman Hillyer, Vice Chair Grendell, Ranking Member Galonski, and members of the House Civil Justice Committee, thank you for the opportunity to support House Bill 646. This legislation seeks to codify essential consumer protection and transparency components to better serve Ohio homeowner interests in residential Property Assessed Clean Energy (PACE) programming.

The Ohio Credit Union League (OCUL) is the state trade association representing the collective interests of Ohio's 232 federally and state-chartered credit unions and their 3.1 million members. As member-owned financial cooperatives, credit unions are committed to protecting the homeowners they serve through consumer-friendly and affordable solutions that foster greater financial well-being for all people, families, and communities. Unfortunately, residential PACE lending programs could fall short in achieving the credit union mission and reasonable consumer protections should be introduced for consumers and lenders alike.

Ohio credit unions continue to be trusted mortgage lenders due to their community presence and safe and sound lending practices. As of 2021 Q4, Ohio credit union first mortgage originations increased by 6.2%, surpassing \$26 billion by year-end. First mortgage loans continue to be the fastest-growing loan product at Ohio credit unions, increasing 11.3% annually and accounting for 34.4% of 2021 loan originations in the state, with a 0.37% average delinquency rate.¹ While Ohio credit unions continue to build robust mortgage portfolios that empower Ohioans with affordable housing access, the absence of adequate residential PACE consumer protections will increase mortgage portfolio risk for lenders without their direct participation and consultation in the PACE loan process.

Residential PACE loans are marketed directly to homeowners as an alternative financing option, sourced through property tax assessments, for energy-efficient home improvement projects. Energy efficiency updates, if appropriate, can decrease monthly home expenses, such as utility costs, and increase homeowner equity over time. However, these non-financial institution PACE administrators would be empowered to secure financing without being subject to standard and robust consumer protection laws, lending regulations, including disclosures, required of credit unions and other mortgage originating entities.

While credit unions welcome innovation in lending and energy efficiency to help homeowners save money and affordably achieve the American Dream of homeownership, OCUL is concerned residential PACE programming will outpace prudent regulatory oversight and lead to potential consumer harm. In addition, the absence of traditional consumer protections required of safe and sound financial institutions creates an uneven playing field to the material disadvantage of homeowners. Credit unions and other well-established financial service providers are heavily regulated by the Consumer Financial Protection Bureau (CFPB) and other federal and state agencies for safety and soundness and consumer protection compliance. This is currently not required of residential PACE administrators in Ohio.

Unlike well-regulated Ohio credit unions and other mortgage providers, residential PACE administrators would not be subject to similar consumer finance requirements to obtain mortgage-like lien obligations. Currently, Ohio credit unions must comply with the CFPB's Ability-to-Repay/Qualified Mortgage (ATR/QM) Rule². The rule requires lenders to assess an individual's ability-to-repay for virtually all closed-end residential mortgage loans secured by the homeowner's property, ensuring the borrower can afford

¹ Donda, U. (2021). *Fourth Quarter 2021: Performance comparison report*. Callahan and Associates. <https://ohiocreditunions.org/wp-content/uploads/2022/04/2021-Q4-Quarterly-Performance-Report.pdf>

² <https://www.consumerfinance.gov/rules-policy/final-rules/ability-to-pay-qualified-mortgage-rule/>

to remain in their home while protecting the financial institution from a possible default. Additionally, residential PACE loans are recorded in first lien position, subjugating the mortgage deed holder to second lien position. By superseding the mortgage, a PACE loan is guaranteed by the property itself rather than the PACE lender, leading to added mortgage default and foreclosure risks over time. For example, when the deed holder, like a credit union, markets the foreclosed property for sale, the outstanding PACE debt remaining will be repaid before and regardless of the property's remaining balance and appraised value. This added risk comes without codified notification requirements and consultation with the mortgage holder, including credit unions.

These regulatory gaps could be exploited by residential PACE administrators operating across the state in the future. While PACE administrators have adjusted program requirements over time and in response to out-of-state legislative activity, Ohio consumers could still be exposed to less consumer protection. Additionally, the unlevel regulatory requirements of PACE administrators diminishes the mortgage lending credibility established through regulated financial institutions, like Ohio credit unions. Consumer protection and integrity in the financial services industry can vastly differ when consumer lending products, such as residential PACE programs, are offered by non-financial institutions that are not subjected to comparable regulation. House Bill 646 takes an important step forward in proactively establishing reasonable, fair, and equitable mortgage loan and consumer protection practices for residential PACE programming.

Thank you for your consideration of enhanced consumer transparency protections included in House Bill 646. I am happy to provide additional information or field questions supporting the Committee's work.