

July 26, 2023

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552.

RE: Residential Property Assessed Clean Energy Financing (Regulation Z), 88 Fed. Reg. 30388, Docket No. CFPB-2023-0029

Dear Director Chopra:

On behalf of the clients, communities, and industries we represent, we write in strong support of the Bureau's proposed rule applying Regulation Z to Residential Property Assessed Clean Energy (PACE) loans. In the proposed rule, the Bureau correctly recognizes that PACE financing fundamentally acts as mortgage credit, yet is provided by underregulated or unsupervised entities that often exploit the lien priority granted to tax assessments. As a result, residential PACE financing should be subject to the same regulations that apply to first-lien mortgages. The rule, if enacted, will significantly limit the well-documented abuses that have occurred in states with active residential PACE programs.

Residential PACE loans are used to fund home energy efficiency upgrades. PACE obligations are added to the borrower's property tax bill as a voluntary assessment, paid through property tax installments. Importantly, PACE loans take a senior lien position, displacing any existing mortgages. As a result, borrowers who are put into unaffordable PACE loans risk losing their homes to foreclosure if they cannot pay their tax bill or their increased escrow payment. Despite this, federal mortgage underwriting regulations have not previously applied to PACE, and that lack of robust consumer protections has led to an avalanche of PACE abuses.¹

The Bureau's application of the Truth in Lending Act's (TILA) ability to repay framework to PACE transactions, including modifications made to account for the unique nature of PACE, will curb abuses in the field. Unaffordable PACE transactions put borrowers' homes at risk of immediate foreclosure like a first-lien default and, thus, they should not be treated differently from traditional mortgages. We urge the Bureau to retain its application of the overall ability to

¹ Rebecca Burns, "The Subprime Solar Trap for Low-Income Homeowners," Bloomberg (April 6, 2021); Jeremy Kohler and Haru Coryne, "State-Supported 'Clean Energy' Loans Are Putting Borrowers at Risk of Losing Their Homes," ProPublica (April 23, 2021); Malena Carollo, "Tax Hit: An energy efficiency finance program is trapping Florida homeowners in debt," Tampa Bay Times (Sept. 10, 2020); Andrew Khouri, "L.A. County ends controversial PACE home improvement loan program," L.A. Times (May 21, 2020); Alex Harris, "'People got screwed.' Despite troubles, green energy lender seeks restart in Florida," WLRN (Feb. 15, 2023); Jeff Horseman, "Riverside-based agency to end controversial PACE loans for energy improvements," The Press-Enterprise (Dec. 22, 2020);

repay framework to PACE; as the Bureau has noted, this analysis is flexible and can be adjusted to provide robust consumer protections tailored toward the unique nature of PACE transactions.

In view of the complications that can arise when a borrower with a mortgage has a sharp increase in their property tax bill, we also recommend that the Bureau include requirements that will create more transparency with respect to the impact of PACE loan payments on homeowners' mortgage payments. In addition, we strongly urge the Bureau to prohibit the use of projected energy savings considered attributable to the PACE-financed home improvements in the underwriting of PACE loans; such estimates are speculative, and may not materialize, leaving homeowners with greater default and foreclosure risk.

We also support the application of the TILA-RESPA integrated disclosure requirements to PACE transactions, including the timing of the advance disclosures. This is particularly important given the lack of regulation or supervision for those that sell PACE loans. Residential PACE loans are frequently originated very quickly through door-to-door solicitations by home improvement contractors. This has led to the type of borrower pressure and obscuring of financial terms, self-interested misrepresentations about savings, that advance disclosures are meant to address.

We also believe residential PACE loans should not have priority over pre-existing mortgages, and the Bureau should work with state regulators and others to consider how to limit the harmful effects from the unwarranted lien priority of residential PACE loans.

In that light, we advise the Bureau to expressly require creditors to notify mortgage servicers of PACE transactions promptly after consummation. An express requirement provides mortgage servicers with greater awareness of a potential superior priority lien, and, for consumers with mortgage escrow accounts, protects a borrower from payment shock. The Bureau should eliminate any discretion and reduce the risk of default.

Finally, we understand that the CFPB has stated that other regulations apply unless excluded, including the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act). Regulation H directs states to adopt minimum uniform standards for licensing and registration of residential loan originators.² This is particularly important to apply to PACE loans because the individuals meeting with consumers to sell PACE financing that will surpass the mortgage to become the first lien on the home are engaging in mortgage loan origination activities. Therefore, these individuals should complete the education, testing, and state licensing requirements under the SAFE Act. Requiring PACE sellers to be subject to Regulation H will enhance consumer protections by increasing accountability and visibility of PACE sellers through their participation in a public registry.

² 12 CFR § 1008.1

We believe that these changes along with others in the proposed rule will limit harm from residential PACE transactions. Given their nature and potential for abusive sales tactics, PACE loans should be subject to all of the mortgage-related federal consumer protection requirements. We strongly encourage the Bureau to finalize the proposed rule without delay, and we appreciate the opportunity to comment on it.

Sincerely,

American Bankers Association
Center for Responsible Lending
Consumer Action
Consumer Bankers Association
Consumer Federation of America
Credit Union National Association
Housing Policy Council
Independent Community Bankers of America
Mortgage Bankers Association
National Association of Federally-Insured Credit Unions
National Consumer Law Center (on behalf of its low-income clients)
National Fair Housing Alliance
National Housing Law Project