

May 30, 2024

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

Re: Proposed Rule for Residential Property Assessed Clean Energy Financing
(Regulation Z), Docket No. CFPB–2023–0029

Dear Director Chopra:

The undersigned consumer organizations and attorneys write to urge the Consumer Financial Protection Bureau to issue a final PACE rule. Last year, we applauded the Bureau for proposing a strong rule that would ensure PACE borrowers receive critically important consumer protections under Regulation Z. But the proposed rule came five years after Congress amended the Truth in Lending Act (TILA) to require the Bureau to issue regulations on residential PACE (R-PACE) loans, and now almost a year has passed without a final rule. Further delay by the Bureau in finalizing the rule, combined with an expected delay in its effective date, will continue the harm PACE has caused and the significant risk of tax and mortgage delinquency and foreclosure to low- and moderate-income homeowners, often in communities of color.

While there had been a slight decline in residential PACE originations in 2023, Morningstar DBRS reports that there were two significant R-PACE asset-backed securities issuances in the first quarter of 2024, with roughly \$347.3 million in securitization volume. If residential PACE ABS issuance continues at this rate, Morningstar DBRS predicts that 2024 will end with more than \$1.3 billion in volume, a significant increase over 2023.¹

In particular, residential PACE lending has increased substantially² in Florida following its approval for hurricane hardening. Recent legislation there will expand PACE even further by permitting its use for sewage system improvements, all quite far afield from its “clean energy” origin. PACE in Florida has operated without any meaningful consumer

¹ Morningstar DBRS, *Can PACE ABS Pick Up the PACE in 2024?* (April 10, 2024).

² Sean Snaith, Ph.D, *An Economic Analysis and Overview of the Florida PACE Funding Program* (\$166,183,940 residential PACE projects were financed in Florida during the first six months of 2023, as compared with \$573,922,326 from 2015 through June of 2023), *available at* <https://floridapace.gov/wp-content/uploads/2023/11/Dr-Sean-Snaith-PACE-Analysis-October-2023-PDF.pdf>.

protections or any oversight by a state regulatory agency. The new legislation (CS/CS/770) continues this by adopting a sham ability to repay standard that does not consider the consumer's current obligations or use a debt-to-income ratio or residual income test, but instead simply provides that the annual PACE payment must be less than 10 percent of the consumer's annual household income (without any definition of household income). It also fails to:

- require meaningful cost of credit information in a usable form;
- adequately disclose the right of rescission in a manner normally expected in loans of this type;
- provide a remedy for the homeowner against the administrators of PACE for any bad acts or failure to follow the provisions set out in the bill, rendering even the weak consumer protections in the bill useless;
- create state agency oversight of PACE loans, in contrast with California.

A final PACE regulation that is consistent with the Bureau's proposed rule will address each of these deficiencies in Florida law and also provide consumers in Florida and throughout the nation with many other critical protections and remedies available under TILA and Regulation Z. Even in California, which has the most extensive state law protections for PACE loans, the Bureau's proposed rule will add essential additional protections, including more structure to the ability to repay requirements and remedies to better provide accountability.

We urge the Bureau to take immediate steps to issue the final PACE rule.

Sincerely,

National Consumer Law Center (on behalf of its low-income clients)
National Housing Law Project
Americans for Financial Reform Education Fund
Bet Tzedek Legal Services
Center for Responsible Lending
Consumer Action
Elder Law & Advocacy
Georgia Watch
Housing and Economic Rights Advocates
Jacksonville Area Legal Aid, Inc.
Jubilee Legal
Law Office of David Valdez Jr.
Law Office of Evan Livingstone

Legal Aid Society of the Orange County Bar Assoc., Inc.
Legal Aid Society of Palm Beach County, Inc.
Maine People's Alliance
New Jersey Citizen Action
Pennsylvania Utility Law Project
Public Citizen, Inc.
Public Counsel
Public Good Law Center
Seraph Legal, P.A.
The Center for Energy Poverty and Climate
TURN-The Utility Reform Network