



June 16, 2023

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

Attention: Comments/ RIN 3170-AA84, Residential Property Assessed Clean Energy Financing (Regulation Z)

Dear Mr. Chopra:

The Housing Policy Council (“HPC”)¹ appreciates the opportunity to submit this comment letter in response to the Consumer Financial Protection Bureau’s (“CFPB”) Notice of Proposed Rulemaking (the “NPR”) on Residential Property Assessed Clean Energy (“PACE”) Financing (Regulation Z).²

We appreciate that the CFPB has dedicated its attention to these lending programs. The PACE loans violate the legal standing of first lien mortgages and are often sold through unsafe and unaffordable financial arrangements that pose a risk to consumers and communities alike. Our members believe that many of the problems with PACE financing result from the unique treatment of these loans as tax assessments, rather than indebtedness secured by the home as collateral, equivalent to traditional mortgage financing.

Through this Proposed Rule, the CFPB takes an important step to address the latter of these two concerns. Therefore, we support the Bureau’s proposal to subject these loans to federal mortgage regulatory obligations including Ability-to-Repay (“ATR”) determinations, Truth in Lending Act (“TILA”) requirements, and “Know Before You Owe” disclosures.

While understandably not a part of the Bureau’s proposal, we remain concerned that the recordation of these loans, as tax rather than land records, complicates and hampers standard identification and monitoring practices that would enable a lender or servicer to know with certainty the presence of these liens/assessments. As a result, the capacity of a lender or servicer to efficiently detect the placement of these liens on properties, either before or after the mortgage is originated, is limited. This defect also works to the detriment of homebuyers seeking to purchase seeking to sell properties; the outstanding obligation carries with the property in perpetuity. This may affect the attractiveness of the property for purchase, which could result in a lower purchase prices. In fact, these concerns – the first lien violation, the impact on home values, and other issues -- spurred the Federal Housing Finance

¹ The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers; mortgage, hazard, and title insurers; and technology and data companies. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families. For more information, visit www.housingpolicycouncil.org

² 88 Fed. Reg. 30388 (May 11, 2023)

Agency (FHFA) to explicitly prohibit Fannie Mae and Freddie Mac from purchasing mortgages where the property has a PACE loan attached.³

In terms of consumer protections and civil liability for bad actors, we applaud the CFPB's proposal to subject these loans to the same requirements as mortgages. In particular, we support the following elements of the proposed rule:

- **Ability to Repay** - The Proposed Rule subjects PACE loans to ATR determinations. Currently, PACE financing is generally based on the tax capacity of the property, rather than on the borrower's ability to repay. Therefore, PACE qualifying criteria may allow borrowers to assume an obligation that significantly increases their property tax payments even if they are not financially equipped to pay, increasing their risk of default on their mortgage. By requiring the creditor to determine the borrower's ability to repay through a comprehensive assessment of a borrower's income, other indebtedness, credit history, and expected monthly payments, borrowers will be protected from predatory PACE loans that increase foreclosure risk to borrowers.
- **Truth in Lending Act** – The Proposed Rule requires that PACE obligations be covered by TILA disclosure mandates and consumer protections. Transparent and clear information and disclosures, like the Annual Percentage Rate on the PACE loan will certainly help to highlight for consumers the higher interest rates associated with PACE liens. This requirement will also allow consumers to effectively compare the cost of a PACE loan to conventional financing alternatives. Further the Proposed Rule's requirement that PACE loans be accompanied by the CFPB's "Know Before You Owe" ("KBYO") disclosures. Coverage under KBYO will ensure that consumers understand their loan options, are able to shop for the best product for their unique needs and are not surprised by unexpected costs.
- **PACE-Specific Disclosures** - The Proposed Rule requires unique PACE-specific disclosures regarding lien priority, tax assessments, and implications for resale to be a part of the loan materials. This set of educational information is very appropriate and will be a valuable new consumer protection tool, to warn consumers about the harmful features of PACE loans. Our members have expressed the concern that PACE marketing materials often promote the notion that future buyers will assume their payments on resale. However, the practical reality has often been that subsequent purchasers do not value the energy improvements in the same manner and often insist that the PACE obligation be extinguished, or the sale price reduced. These risks will now be fully explained to borrowers.

We appreciate CFPB's report accompanying the Proposed Rule and its vigilance in tracking PACE activities nationwide.

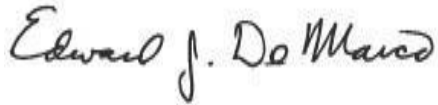
HPC members recognize the commitment of communities across the nation to reduce energy consumption and improve energy efficiency in residential and commercial properties and the need for policymakers, community leaders, and consumers to pursue and promote energy sustainability. As such, we support efforts to facilitate the ability of homeowners to finance energy improvements.

³ 77 Fed. Reg. 36,086, (June 15, 2012) (proposed rule); Federal Housing Finance Agency, Statement of the Federal Housing Finance Agency on Certain Super-Priority Liens, Dec. 23, 2014, available at: <http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-the-Federal-Housing-Finance-Agency-on-Certain-Super-Priority-Liens.aspx>

The push to increase awareness and utilization of more energy efficient products and practices, however, must also protect consumers from unsafe and unaffordable arrangements, such as PACE financing programs, which pose a risk to consumers and communities alike. We continue to recommend conventional financing options such as home equity lines of credit or second mortgages, as safer, more suitable products for providing energy efficient home improvements. These options are more favorable for homeowners due to lower interest rates and standards of qualification intended to protect the consumer.

Thank you for consideration of our concerns and recommendations.

Yours truly,

A handwritten signature in black ink that reads "Edward J. DeMarco". The signature is written in a cursive style with a large initial "E" and "D".

Edward J. DeMarco
President
Housing Policy Council