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May 7, 2019

The Honorable Kathleen Kraninger
Director
Consumer Financial Protection Bureau
Comment Intake
1700 G Street NW
Washington, DC 20552

RE: Comments on Advance Notice of Proposed Rulemaking on Residential Property Assessed Clean Energy Financing; Docket No. the Bureau-2019-0011; RIN 3170-AA84

Dear Director Kraninger:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to provide comments and input regarding the Bureau of Consumer Financial Protection's ("CFPB" or "Bureau") advance notice of proposed rulemaking (ANPR) on Residential Property Assessed Clean Energy Financing (PACE). Residential PACE loans allow consumers to retrofit their property with energy efficient alternatives. They finance the costs of these home improvements through a financing vehicle that results in a tax assessment on the real property that is typically paid off in installments over fifteen to twenty years. While it may seem straight forward, these programs have many complexities and potential complicating factors, not the least of which is that these obligations are a form of consumer credit, encumbering the consumer's home and, if not paid, can result in foreclosure. ICBA is concerned about the problems faced by homeowners who receive unaffordable PACE loans due to a lack of a consumer protection framework to protect them.

¹ *The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 52,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 760,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than \$4.9 trillion in assets, \$3.9 trillion in deposits, and \$3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.*

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Each PACE program varies by state and municipality with each loan or project typically initiated by private companies that approve separate contractors. Moreover, the financing comes from proceeds generated by issuing revenue bonds at the city, state, or county level. These bonds are secured by the anticipated payments of the PACE loan obligations attached to each property owner's property tax bill until the loan is paid off. In the event of a foreclosure or nonpayment, the delinquent balance has senior claim to other liens. If a property is sold before the PACE loan amortizes, the obligation automatically runs with the property to the new property owner. Without appropriate oversight, this complex arrangement can allow for bad actors to take advantage of and/or irreparably damage both consumers and lending institutions. ICBA believes it is imperative to protect consumers and lenders that may fall victim to predatory or unfair lending practices. We appreciate that the Bureau is moving forward to help elucidate its regulatory oversight policies of PACE lenders and other stakeholders.

ICBA recognizes the importance of financing efficient and renewable energy projects for homeowners throughout the United States. We believe that PACE loans, if carefully and uniformly regulated, may be one option for homeowners who otherwise might find these home additions prohibitively expensive. However, residential PACE loans are essentially a unique form of mortgage financing and should therefore be subject to appropriate federal consumer protection requirements.

Applying the Truth In Lending Act's (TILA) ability-to-repay (ATR) requirements to PACE loans may be challenging given the complexity of these financial obligations and the involvement of local governments and private participants. However, ICBA argues that the intent of the law is relatively clear. There needs to be uniform guidance and regulation that prohibits creditors from making loans unless there is a reasonable and good faith determination based on verified and documented information that the consumer has a reasonable ability to repay the loan. Such a determination includes, among other factors, consideration of the consumer's credit history, current income, expected income, current obligations, and debt-to-income ratio.²

Section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) amended the TILA to give the Bureau authority to regulate PACE financing projects according to standard TILA ability-to-repay requirements that apply to residential mortgage loans. EGRRCPA amended TILA³ to require the Bureau to issue regulations implementing the statute's ATR requirements with respect to PACE loans. The statute also requires the Bureau to apply the remedy provisions in TILA⁴ to PACE loans, allowing consumers to recover damages and have access to foreclosure defense and other remedies for violations of the PACE regulations. The Bureau must therefore clarify that TILA's mortgage protections apply to PACE

² 15 U.S.C. §1639c(a)

³ 15 U.S.C. § 1639c

⁴ 15 U.S.C. § 1640

loans. It must also alter TILA's disclosure requirement for PACE loans and apply TILA's remedy scheme accordingly.

ICBA suggests consulting the Department of Energy's Best Practice Guidelines for Residential PACE Financing Programs for guidance and general background on PACE loans. It provides a detailed summary on how state and localities should work with program administrators to establish underwriting guidelines – evaluating income, existing debt obligations, and credit scores. It also lays out extensive measures that will help ensure consumer and lender protections, including necessary property owner education, disclosures, and how existing mortgage servicers should be notified when property owners place a PACE obligation on the property.⁵ Additionally ICBA believes that those individuals that arrange PACE financing should be subject to the CFPB's Mortgage Loan Originator Compensation Rules and quite possibly subject to the Nationwide Multistate Licensing System (NMLS) licensing requirements.

ICBA is grateful for the opportunity to respond to the Bureau's ANPR regarding residential PACE loans and the implementation of section 307 of EGRRCPA. We recognize the value of the program as it promotes clean and sustainable energy for homeowners who might otherwise be unable to afford it. However, given the serious consequences attendant to unaffordable PACE loans, these loans should be subject to the same rules as all other forms of consumer credit used for home improvement, especially when the consumer uses their home as collateral for the loan. Amending TILA in order to prescribe regulations for these loans is a good first step to safeguard lenders and consumers. Our member community banks take consumer protection very seriously, and we are happy to work with the CFPB to make this happen.

Sincerely,

/s/

Ron Haynie
Senior Vice President, Mortgage Finance Policy

⁵ <https://www.energy.gov/sites/prod/files/2016/11/f34/best-practice-guidelines-RPACE.pdf>