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), Docket No. CFPB-2023-0029

Dear Director Chopra

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to provide comments on the Consumer Financial Protection Bureau's (CFPB or Bureau) proposed rule that would apply the Truth in Lending Act's (TILA) ability to repay (ATR) framework to Residential Property Assessed Clean Energy (PACE) loans. ICBA has long voiced concerns about certain characteristics of these loans, the underregulated entities that make them, and the potential for abuse that results in borrowers being unable to afford a PACE loan due to insufficient disclosures and deceptive sales tactics. ICBA believes that this proposal addresses many of these concerns and strongly supports its implementation.

Residential PACE loans are formed by state initiatives by authorizing counties, municipalities, and other government entities to enact a financing program that allows consumers to retrofit their property with energy-efficient alternatives. This type of financing vehicle results in a tax

[1] The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services. With nearly 50,000 locations nationwide, community banks employ nearly 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding $5.8 trillion in assets, $4.8 trillion in deposits, and $3.8 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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assessment on the real property that is typically paid off in installments over fifteen to twenty years. Moreover, in the event of a foreclosure or nonpayment, the delinquent balance of a PACE loan has senior claim to other liens. If a property is sold before the loan fully amortizes, the obligations remain with the property and are the responsibility of the new owner. Without adequate oversight and regulations, both the borrower and the entities with a preexisting lien on the property are vulnerable to deceptive and unregulated PACE lending. As such, selling these mortgage loans on the secondary market becomes more challenging as Fannie Mae and Freddie Mac will not purchase a loan on a property with a PACE lien attached.

The proposed rule addresses our concern that federal mortgage underwriting regulations have not previously applied to PACE loans. PACE loan financing is essentially a type of mortgage credit and should be regulated accordingly. We therefore applaud the Bureau for recognizing that it is appropriate to apply TILA's ATR framework for these loans – modified to reflect their unique nature – to dissuade and prevent unsupervised entities from exploiting the lien priority of tax assessments and to make sure the borrower is truly in a position to repay the loan. ICBA also strongly supports the application of the TILA-RESPA integrated disclosure requirements. PACE lenders have earned a reputation for using home improvement contractors to make quick, door-to-door solicitations while potentially obscuring important financial information. Requiring PACE lenders and contractors to adhere to appropriate disclosure requirements will help ensure that the borrower clearly understands and has time to evaluate the total costs and terms of financing.

In addition to the proposed changes, we also urge the Bureau to make transparency a priority as it prepares a final rule. For example, lenders need to clearly document and demonstrate how PACE loan payments will ultimately impact the homeowner's mortgage payments, particularly when the borrower experiences a significant increase in their property tax bill. Further, we are concerned that factoring in projected cost savings resulting from PACE-financed home improvements will result in a greater risk of default due to their speculative nature. Such projected savings should not be considered during the underwriting process.

It is also critical that mortgage servicers be informed of PACE transactions so they are aware of the superior lien that accompanies them. Ideally, PACE loans should not have priority over pre-existing mortgages. Given the state and local origins of these loans, we urge the CFPB to conduct a study in collaboration with state regulators to determine the extent this lien priority negatively impacts borrowers, local lenders, and the secondary mortgage market. The Bureau should then act accordingly to limit this impact with additional rulemakings.

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We also ask the Bureau to further clarify to all stakeholders that, unless excluded, all other mortgage lending regulations apply to PACE loans. This includes adherence to the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) and Regulation H that require the adoption of minimum uniform standards for the licensing and registration of residential loan originators. If a PACE loan qualifies as mortgage loan origination activity, individuals making those loans should be educated and licensed according to the SAFE Act. This will significantly enhance consumer protections and increase lender accountability.

ICBA appreciates the opportunity to comment on this proposed rule and looks forward to working with the Bureau on this issue in the coming months. Please contact the undersigned if you have any questions regarding this letter.

Sincerely,

/s/

Tim Roy
Assistant Vice President - Housing Finance Policy