

United States Senate

WASHINGTON, DC 20510

February 27, 2019

Ms. Kathleen Kraninger
Consumer Financial Protection Bureau
1700 G St., N.W.
Washington, D.C. 20552

Dear Director Kraninger,

We write regarding the implementation of Section 307 in P.L. 115-174, which requires the Consumer Financial Protection Bureau (Bureau) to issue rules requiring creditors to assess a borrower's ability to repay under the Truth In Lending Act that are specifically tailored to the unique nature of a Property Assessed Clean Energy (PACE) lien. While we are aware that the Bureau has included implementing these rules in its agenda, we urge the Bureau to prioritize issuing this rulemaking.

With enabling statutes for PACE programs in approximately 25 states, and residential PACE programs already operating in five states, we need to ensure there are robust consumer protections in place. We are concerned by reports of misrepresentation and fraud in the PACE loan programs.^[1] Currently, PACE home improvements for many homeowners, especially low and moderate-income families, are far from affordable, and homeowners lack proper disclosures that reflect the true cost of the improvements. Homeowners are often unaware that financing for the loan is reflected in a property tax lien, resulting in many homeowners hit with unexpected payments on their tax bills. Properly ensuring that consumers are aware that PACE programs are loans requires proper disclosures and other protections, in addition to an ability to repay analysis, to most effectively help our constituents reach their ultimate goal of accessing credit for energy efficiency modifications to their homes.

While residential PACE lending programs already are subject to the Ability to Repay standard and other provisions of the Truth in Lending Act (TILA), the Bureau should issue regulations to ensure that its rulemaking is tailored to reflect the unique characteristics of PACE liens. Without a comprehensive and thorough rulemaking, consumers can be left vulnerable to unscrupulous contracts, which we have seen in some cases.

The purpose of PACE programs is to allow home-owners to finance energy efficiency upgrades and modifications and to repay the loan through annual assessments on their property tax bills.

^[1] For reports of fraud reported in the State of California, see: "Residential Property Assessed Clean Energy (PACE) Loans: The Perils of Easy Money for Clean Energy Improvements." *National Consumer Law Center*. September 2017. Available at: https://www.nclc.org/images/pdf/energy_utility_telecom/pace/ib-pace-stories.pdf.

Many consumers were, and still are, unaware of technicalities and restrictions involved with repayment via a tax lien, including the challenges of refinancing or selling their home without first paying off the entire PACE loan. Additionally, PACE loan financing should not be contingent on the equity of the home, but rather on the homeowner's ability to repay the loan with consideration of debt-to-income ratio and residual income.

In carrying out this mandate, we strongly encourage the Bureau to include the following in their regulations:

- Apply protections under TILA for residential PACE-loans including, but not limited to "Ability-to-Repay," and "Know Before You Owe" Rules and other consumer protections, such as periodic statements. PACE financing must be properly underwritten to ensure a consumer's ability to afford the repayment. Rulemaking to implement the protections offered under TILA should be written to reflect the unique nature of PACE loans.
- Consumers must be provided with proper disclosures written in plain terms and provided in advance of closing. The Bureau's regulations should also include a fee and amortization schedule.
- Underwriting standards should include traditional factors for a conventional loan such as: income verification, an assessment of all debts, and the use of debt -to-income and residual income analysis.
- Debt-to-income ratio and/or residual income minimums should not exceed what is currently required for a traditional loan, as PACE financing establishes a super-priority lien over the entire property.
- Any type of PACE-related financing or accompanying loans that are secured by the home, regardless of the name it is marketed or sold under, should be covered by Bureau regulations and should not preempt regulations in states that set a higher standard. The Bureau should also examine the practice of multiple PACE liens on a single property.
- Conduct field hearings in states with active PACE loan programs to further gather information prior to issuing proposed regulations.
- Consult with consumer advocates and financial institutions to better understand the unique characteristics of the product and its effects on consumers of PACE loans.

We also encourage the Bureau to consult with state regulators, such as the California Department of Business Oversight, which is in the process of developing regulations on PACE financing, and with regulators in Florida and Missouri, where programs are established. We would be interested in your research on the current state of PACE lending and on whether there are other types of financing are better for consumers than tax-lien based loans.

In addition, we also encourage the Bureau to consult with other government agencies, including the Federal Housing Finance Agency (FHFA), Federal Housing Administration (FHA), the Department of Veterans Affairs and the United States Department of Agriculture (USDA) to

assess the impact of a super-priority lien that PACE financing establishes. We note that the FHFA has opposed purchasing mortgages with PACE financing due to similar concerns as those we express in this letter.

We appreciate your attention to this matter and look forward to working with you on implementing this regulation.

Sincerely,

A handwritten signature in blue ink that reads "Catherine Cortez Masto". The signature is written in a cursive style with a large initial 'C'.

Catherine Cortez Masto
United States Senator

A handwritten signature in blue ink that reads "Tom Cotton". The signature is written in a cursive style with a large initial 'T'.

Tom Cotton
United States Senator