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**National Association of Federally-Insured Credit Unions**

July 26, 2023

Comment Intake—PACE  
c/o Legal Division Docket Manager  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552.

**RE: Residential Property Assessed Clean Energy (PACE) Financing (Regulation Z)**

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the notice of proposed rulemaking (NPRM) seeking to prescribe ability-to-repay (ATR) rules for Property Assessed Clean Energy (PACE) financing and to apply the civil liability provisions of the Truth in Lending Act (TILA) for violations. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve nearly 137 million consumers with personal and small business financial service products. NAFCU and its member credit unions appreciate the opportunity to comment on this proposed rule and urge the Bureau to finalize the rule as proposed. By treating PACE loans as consumer loans secured by real property and subjecting them to federal consumer protection requirements, the Bureau can help to safeguard American homeowners and ensure more comprehensive, fair, and transparent financing practices.

**General Comments**

PACE financing has emerged as an innovative tool for property owners to finance clean energy improvements, such as energy-efficient upgrades and renewable energy installations. While the specific details of PACE programs may vary across states and municipalities, they typically involve private companies approving contractors to carry out the improvements. The financing is then provided through proceeds raised by issuing municipal revenue bonds, with the bond payments secured by the borrower's obligation to repay the PACE loan added to their property tax bill. This financing mechanism allows property owners to repay their loans through assessments added to their property tax bills, typically with longer repayment terms ranging from 10 to 20 years. PACE programs have the potential to drive significant investment in clean energy and contribute to environmental sustainability goals. However, these loans function similarly to mortgage financing, making it imperative that they are subject to federal consumer protection standards. Currently, PACE loans are misclassified as tax assessments rather than loans, resulting in a lack of standardized disclosure frameworks and comprehensive consumer protections. Credit unions do not offer PACE financing, as any credit union lending products for home improvements do not result in a tax assessment on the real property.

Prescribing ATR rules for PACE financing is a fundamental step in safeguarding borrowers and promoting responsible lending practices. By requiring lenders to assess the borrower's ability to repay the PACE loan, the Bureau can mitigate the risk of borrowers taking on unaffordable debt burdens. PACE loans are primarily offered by specialized PACE financing providers, including fintechs, rather than traditional financial institutions. These companies often use technology to simplify the application and approval process, making it easier for property owners to access PACE loans. Although these expedited approval processes may be attractive to consumers and contractors, the lack of guardrails that are characteristic of traditional lenders often places consumers at risk. This follows a growing trend of unregulated actors in the lending space that have significant potential to harm not only consumers, but the reputation of other lenders, and the financial system as a whole. The application of ATR rules would mandate that lenders consider the borrower's income, assets, employment status, and other relevant financial factors before extending PACE financing. Such an assessment would help prevent cases of overleveraging and reduce the likelihood of default, benefiting both borrowers and lenders.

### **Impact on Consumers**

Since the introduction of PACE loans, a major concern has involved the absence of requirements to assess a borrower's ability to repay the PACE loan. Unlike traditional mortgage products, PACE financing often disregards crucial factors such as income, credit history, existing credit obligations, and expected monthly payments. These omissions pose significant risks to borrowers, potentially burdening them with debt they may not have the means to repay.<sup>1</sup> Furthermore, PACE loans typically carry interest rates ranging from eight to twelve percent, which is significantly higher than rates for conventional mortgage products. This disparity places an additional financial strain on homeowners as recent reporting from Florida has made clear.

“Since the beginning of [2023] ... the [Florida PACE Funding Agency] has issued more than 30 liens or lien notices on homes in Pinellas, indicating it has loans outstanding there...[C]oncerns that unsuspecting homeowners could be stuck with tax bills they can’t afford...were coming true elsewhere in the state, with some loan recipients’ tax bills jumping by thousands of dollars.”<sup>2</sup>

Moreover, the lack of standardized consumer protections and limited state and municipal laws governing PACE loans has resulted in marketability challenges for homes encumbered by PACE loans, as reported by consumers and outlets like the Wall Street Journal.<sup>3</sup>

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<sup>1</sup> Tampa Bay Times, “An energy efficiency finance program is trapping Florida homeowners in debt” (Feb. 22, 2021) *available at* <https://www.tampabay.com/investigations/2020/09/10/tax-hit>.

<sup>2</sup> Tampa Bay Times, “Pinellas banned a controversial loan program. Now it’s here anyway” (May 4, 2023) *available at* <https://www.tampabay.com/news/pinellas/2023/05/04/pace-loan-program-lawsuit-tax-bills/>

<sup>3</sup> New York Times, “America’s Fastest-Growing Loan Category Has Eerie Echoes of Subprime Crisis” (Jan. 10, 2017) *available at* <https://www.wsj.com/articles/americas-fastest-growing-loan-category-has-erie-echoes-of-subprime-crisis-1484060984>.

The proposed rule is a crucial step towards rectifying these issues and providing essential protections for American homeowners. By implementing federal TILA-based requirements and adhering to Home Ownership and Equity Protection Act (HOEPA) standards, this rule would ensure that PACE loans receive the same level of scrutiny and safeguards as traditional mortgage products. The ATR and "Know Before You Owe" rules, along with federal oversight, would enhance transparency, mitigate risks, and empower borrowers to make informed decisions about PACE financing.

NAFCU believes that the proposed rule will also address other consumer concerns associated with PACE financing. For example, the requirement for regular monthly payments instead of large lump sum payments would alleviate the burden on borrowers. Additionally, by implementing federal safeguards, the rule would ensure that interest rates on PACE loans are fair and competitive, encouraging more homeowners to embrace energy-efficient improvements.

Furthermore, applying the civil liability provisions of TILA to PACE transactions serves as a crucial consumer protection measure. TILA's civil liability provisions establish clear guidelines for lenders and ensure that borrowers have access to legal recourse in cases of noncompliance. By extending TILA's provisions to PACE financing, borrowers will have enhanced protection against predatory lending practices, false advertising, and inadequate disclosures. This, in turn, will foster trust in the PACE market and encourage greater participation from homeowners seeking clean energy improvements.

### **Impact on Credit Unions**

Credit unions have faced challenges due to the superior lien position of PACE loans, as they are responsible for collecting mortgage payments to pay off the PACE loans. The process burden imposed on credit unions, along with the confusion experienced by consumers regarding property titles and mortgage payments, can be alleviated through the implementation of the proposed ATR requirement. By clarifying these issues and standardizing PACE origination processes, credit unions can better serve their members and ensure a smoother experience for borrowers.

Additionally, mortgages with PACE loans attached to them generally cannot be sold to the Government-Sponsored Enterprises (GSEs) such as Fannie Mae, Freddie Mac, or the Federal Home Loan Banks. Because PACE loans hold a superior lien position, they have priority over the mortgage lender's lien and are typically not eligible for financing through federal lending programs. The presence of a PACE loan on a property poses challenges for lenders and investors due to the potential risks associated with the superior lien position. In the event of foreclosure, the PACE lien would need to be satisfied before the mortgage lender could recover its investment. This creates uncertainty and increases the risk for potential buyers of mortgage-

backed securities, including the GSEs. As a result, the GSEs typically have eligibility requirements that exclude properties encumbered by PACE loans.

Another significant concern is the potential for conflicts of interest within PACE programs. While most service providers are honest, there is a small percentage of contractors who may make misleading statements to secure high-paying jobs. As NAFCU noted in its 2019 letter in response to the Bureau's Advance Notice of Proposed Rulemaking (ANPR) on Residential Property Assessed Clean Energy Financing, "consumers report aggressive cold call and door-to-door marketing campaigns. Aggressive marketing tactics harm certain groups of consumers more than the average consumer, such as elderly individuals or those who do not speak English as their primary language. In addition, an overwhelming amount of consumers are reporting misrepresentations made by contractors and loan servicers. Misrepresentations include, but are not limited to, energy savings that are never realized, and loans that include a government subsidy or guarantee, which, in fact, does not exist."<sup>4</sup> Additionally, contractors reportedly receive referral fees from PACE lenders, creating conflicts of interest. Traditional financial institutions such as credit unions are acutely aware of their responsibilities under Section 8 of The Real Estate Settlement Procedures Act (RESPA) and have the proper compliance systems in place to ensure that this type of activity does not occur.<sup>5</sup> However, nontraditional lenders such as fintechs lack adequate regulatory oversight and are much more susceptible to these practices. The proposed rule, by introducing federal consumer protections, can address these conflicts and ensure fair practices in PACE program promotion.

The implementation of EGRRCPA section 307 and the amendment of Regulation Z are vital to address the unique characteristics of PACE transactions adequately. PACE financing differs significantly from traditional mortgage lending, and thus, a tailored regulatory framework is necessary. These measures will enable regulatory agencies to craft rules and guidelines specific to PACE financing, considering its distinct features, such as the assessment repayment structure and lien priority. This approach ensures that the regulatory framework aligns with the goals of PACE programs while safeguarding consumer interests.

NAFCU urges the Bureau to enact the proposed rule prescribing ATR rules for PACE financing and applying the civil liability provisions of TILA for violations. By treating PACE loans as consumer loans secured by real property and subjecting them to federal consumer protection requirements, we can safeguard American homeowners and ensure fair and transparent financing practices. The proposed rule is an essential step towards rectifying the current lack of standardized protections and limited state and municipal laws governing PACE loans.

## Conclusion

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<sup>4</sup> NAFCU, "Letter to CFPB - ANPR on Residential Property Assessed Clean Energy Financing" (May 6, 2019) *available at* <https://www.nafcu.org/system/files/files/5-6-1LettertoCFPBonResidentialPACEFinancing.pdf>.

<sup>5</sup> 12 CFR 1024.14

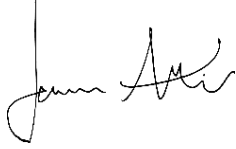
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NAFCU appreciates the opportunity to comment on the proposed rule. If you have any questions, please do not hesitate to contact me at 703-842-2268 or [jakin@nafcu.org](mailto:jakin@nafcu.org).

Sincerely,

A handwritten signature in black ink, appearing to read "James Akin". The signature is written in a cursive style with a large initial "J" and "A".

James C. Akin

Senior Regulatory Affairs Counsel