

Banking and Finance Law Daily Wrap Up, TRUTH IN LENDING—Proposed rule would protect homeowners seeking clean energy financing, (May 2, 2023)

Banking and Finance Law Daily Wrap Up

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Comments on the CFPB's proposed rule must be submitted by July 26.

The Consumer Financial Protection Bureau has issued a [proposed rule](#) that would provide new consumer protections for homeowners seeking clean energy financing through residential Property Assessed Clean Energy (PACE) loans. PACE loans are secured through a property tax lien on the borrower's home and are used to finance clean energy improvements, such as solar panels or projects to prepare homes for natural disasters. A new CFPB report found that homeowners with PACE loans had an increase in negative credit outcomes, mainly mortgage delinquency.

The [proposed rule](#) would: (1) clarify PACE financing coverage under the Truth in Lending Act (TILA) and Regulation Z through amendments to Regulation Z's exclusion for tax assessments and tax liens from the definition of credit; (2) prescribe ability-to-repay requirements for residential PACE financing; and (3) make additional clarifications and amendments to certain provisions in Regulation Z to make clear how other rules in Regulation Z apply to PACE financing given its unique nature. Comments on the CFPB's proposed rule must be submitted by July 26.

Deceptive practices. Residential PACE loans finance home improvements for borrowers, who pay back the loans through increased property tax payments over time. The obligation of paying the loan back through higher property tax payments remains with the property even if the borrower sells the property. Although PACE lending is authorized by local governments, private companies typically administer the programs, which can include marketing of the loans, managing originations, and making the lending decisions.

About five states permit PACE loans, but most of them are originated in Florida or California. According to Sen. Catherine Cortez Masto (D-Nev), too many borrowers are unaware of the technicalities and restrictions involved with these loans, which can raise their property taxes substantially and cause financial instability. "I've raised the alarm about the PACE loan sales practices which frequently are promoted by door-to-door salespeople to homeowners who may not realize that failing to repay the loan could result in foreclosure," [said](#) Cortez Masto.

The Bureau noted that there are several examples of unfair and deceptive practices surrounding PACE loans. Recently, the Federal Trade Commission entered into a settlement with Ygrene Energy Fund Inc. for deceiving consumers about the potential financial impact of PACE loans, and for unfairly recording liens on consumers' homes without their consent (see [Banking and Finance Law Daily](#), Oct. 31, 2022).

"When unscrupulous companies bait homeowners into unaffordable loans with exaggerated promises of energy bill savings, this can lead to serious financial distress," [said](#) CFPB Director Rohit Chopra. "We are proposing new rules that would require sensible safeguards on these clean energy loans."

If finalized, the Bureau noted that the proposed rule would require PACE creditors and PACE companies to consider a consumer's ability to repay when issuing a new PACE loan, and it would amend Regulation Z to address how the Truth in Lending Act applies to PACE transactions. The proposed rule also would adjust disclosure requirements to better fit PACE loans and to help consumers understand the loans' impact on their property tax payments.

Financing report. Along with the proposed rule, the CFPB released a new [Data Point](#), *Property Assessed Clean Energy Financing and Consumer Financial Outcomes*, which found that PACE loans cause an increase in negative credit outcomes, particularly mortgage delinquency. Some of the risks of PACE loans to consumers were:

- **Higher property taxes.** PACE loans increased a homeowner's property taxes by about \$2,700 per year on average (an increase of about 88 percent).
- **Higher interest rates.** The average PACE loan had a 7.6 percent interest rate, which is much higher than average interest rates for home purchase or home equity loans.
- **Increased mortgage delinquencies.** In the two years following PACE loan origination, the mortgage delinquency rate for PACE loan borrowers with a pre-existing mortgage increased by 2.5 percentage points.
- **Increased credit card balances.** Consumers without a pre-existing mortgage increased their credit card balances in response to acquiring a PACE loan, perhaps accumulating credit card debt in order to make the PACE loan payments, the CFPB theorized.

Companies: Ygrene Energy Fund Inc.

RegulatoryActivity: CFPB CaliforniaNews ConsumerCredit CreditDebitGiftCards DebtCollection ESGNews
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