

Banking and Finance Law Daily Wrap Up, TRUTH IN LENDING—Consumer finance protection groups urge adoption of proposed rule on PACE loans, (Aug. 2, 2023)

Banking and Finance Law Daily Wrap Up

[Click to open document in a browser](#)

By Kathleen Bianco, J.D.

Organizations support swift adoption and enforcement of PACE proposal to hinder abuses and predatory practices.

The Consumer Financial Protection Bureau's proposed rule that would provide new consumer protections for homeowners seeking clean energy financing through residential Property Assessed Clean Energy (PACE) loans has garnered support, as well as suggestions for additional improvements, from the [American for Financial Reform Education Fund](#) (AFREF), the [Credit Union National Association](#) (CUNA), and a coalition of financial services organizations.

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 2023 CFPB report found that homeowners with PACE loans had an increase in negative credit outcomes, primarily mortgage delinquency. Moreover, many PACE borrowers are living in underserved communities.

CFPB proposal. 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 were due by July 26 (see [Banking and Finance Law Daily](#), May 2, 2023).

AFREF comments. The AFREF [expressed](#) its appreciation and support of the proposal, indicating that it represents an opportunity to avoid future harms to consumers. The group specifically supports the application of the ability-to-pay (ATR) rules for PACE financing and the civil liability provisions of the Truth in Lending Act (TILA) for violations. The group applauds the decision to exclude PACE loans from the TILA ATR rule's Qualified Mortgage (QM) presumption of compliance, as the nature of PACE is inherently risky and it should not receive the same protections from liability as other mortgages. The AFREF further asserts that, "the CFPB should not permit creditors to consider projected energy savings into the ability to repay analysis for PACE; estimated future savings may or may not materialize, due to shifting household and market factors, and incorporating speculative savings can increase default and foreclosure risk."

AFREF further supports the application of the TILA Real Estate Settlement Procedures Act (RESPA) integrated disclosure requirements, which it says may help to slow down the speed of transactions, potentially giving consumers time to find services that fit their financial needs. Finally, AFREF contends that deterring creditors from issuing loans consumers are unable to repay by subjecting them to liability standards will decrease the frequency of delinquency under these loans.

While supportive of the proposed changes, AFREF urges the CFPB to work with other federal agencies, consumer advocates, financial institutions, and community groups to develop consumer protection guidance for existing and emerging green lending products beyond PACE. "Demand and resources going towards green projects are on the rise, and there will likely be an influx of predatory providers and scammers alongside the influx of capital for green lending products," the group said.

CUNA comments. CUNA filed two comment letters in response to the PACE loan proposal, one in conjunction with a coalition of other financial services organizations and one individually. In the [joint letter](#), the organizations praise the application of Regulation Z implementing the TILA to PACE loans. The letter states that because PACE financing acts as a mortgage credit, “residential PACE financing should be subject to the same regulations that apply to first-lien mortgages.” The joint comments also espouse the need for transparency related to the impact of the PACE loan payment on a homeowner’s mortgage payments. The group also expresses concerns regarding the priority of PACE loans over pre-existing mortgages, encouraging the agency to work with state regulators and others to address the harmful effects of the super priority status of PACE loans.

CUNA’s individual [comments](#) go further in addressing the “super priority” status, asserting that this can pose significant risks to borrowers and their mortgagees. While recognizing that CFPB has no authority to alter the priority of liens, CUNA urges the agency to work with others to address the potential harmful effects of this “super priority” status. CUNA notes that, in certain situations, if a PACE loan takes a first lien position over an existing mortgage agreement, the borrower may have to pay off the PACE obligation through a no-cash out refinance. “Borrowers who originate PACE loans do not always understand that in doing so, they may be forced to refinance the debt at current interest rates. They rarely understand that they may be technically defaulting on their mortgage agreement or deed of trust.” As a result of this, CUNA encourages the addition of a requirement for the direct notification to mortgage servicers, which it has indicated is missing from the proposal. This could potentially afford mortgage providers the ability to provide timely notification to borrowers of potential issues related to their existing mortgages.

CUNA further suggests that PACE loan companies should be required to provide a simple periodic statement to borrowers every few years confirming the amount of principal which has been paid up to that point, the remaining balance and term, an estimated pay-off date, and contact information for PACE financing company. Finally, CUNA contends that CFPB should reevaluate its recommended language regarding the risk of late payments, to ensure that it covers all potential risks, not just penalties and late fees.

In conclusion, CUNA praised the actions of the CFPB for establishing “strong consumer protections around these loans,” while expressing additional considerations aimed at giving “the rule its fullest effect.”

Prior comments. Last month, the Independent Community Bankers of America (ICBA) and Better Markets submitted comments to the CFPB saying the proposed rules are needed to improve transparency and help protect consumers against deceptive practices (see [Banking and Finance Law Daily](#), July 31, 2023).

Companies: Americans for Financial Reform Education Fund; Better Markets; Credit Union National Association; Independent Community Bankers of America

RegulatoryActivity: CFPB ConsumerCredit CreditDebitGiftCards DebtCollection ESGNews FinancialStability GCNNews Loans Mortgages TruthInLending UDAAAP