November 29, 2018

The Honorable Mick Mulvaney
Acting Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552

Dear Acting Director Mulvaney,

With the passage of S.2155 (Public Law 115-174) we write regarding the implementation of Section 307, with regards to Property Assessed Clean Energy (PACE) Financing. With PACE programs operating in over 20 states, we need to ensure there are uniform consumer protections in place, especially for the residential programs in California, Missouri, and Florida. Properly ensuring that consumers are aware that PACE programs are vehicles for lending will help bring credibility to PACE providers and most effectively help our constituents reach their ultimate goal of accessing credit for energy efficiency modifications to their homes.

We encourage the Bureau to make implementing regulations a high priority. Residential PACE lending programs should be subject to the Truth in Lending Act (TILA) or similar protections crafted specifically for the PACE program. Otherwise, consumers can be left vulnerable to unscrupulous lenders, which we have seen in some cases in our states.

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

Section 307 requires the Consumer Financial Protection Bureau (CFPB) to prescribe “Ability to Repay” (ATR) regulations that account for the unique nature of PACE financing. In carrying out this mandate, we strongly encourage the CFPB to include the following in their regulations:

- Require protections for residential PACE-loans including “Ability-to-Repay” and “Know Before You Owe” Rules. PACE financing must be properly underwritten to ensure a consumer’s ability to afford the repayment.
- Consumers must be provided with proper disclosures written in plain terms. 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, monthly household expenses, and so forth.
- Debt-to-income ratio 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, regardless of the name it is marketed or sold under, should be covered by CFPB regulations.

We also strongly encourage the Bureau to consult with state regulators, such as the California Department of Business Oversight, which is in the process of developing comprehensive regulations on PACE financing.

In addition, we also encourage the Bureau to consult with other government agencies, including the Federal Housing Finance Agency (FHFA), Federal Housing Administration (FHA), and the Department of Veterans Affairs to assess the impact of a super-priority lien that PACE financing establishes.

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

Sincerely,

BRAD SHERMAN
Member of Congress

ED ROYCE
Member of Congress

JULIA BROWNLEY
Member of Congress

PETE AGUILAR
Member of Congress

KEN CALVERT
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