

October 15, 2018

Mick Mulvaney  
Acting Director  
Bureau of Consumer Financial Protection  
1700 G Street, N.W.  
Washington, DC 20552

Dear Acting Director Mulvaney,

The undersigned consumer, civil rights and community organizations, along with representatives of the banking and real estate industries, write to urge the Bureau to expeditiously initiate the rulemaking process to implement Section 307 in the Economic Growth, Regulatory Relief, and Consumer Protection Act (Public Law 115-174).

Section 307 amended the Truth in Lending Act (TILA) (15 U.S.C. § 1639c) to require the Bureau to issue regulations implementing the statute's "Ability to Repay" requirements with respect to Property Assessed Clean Energy (PACE) loans. The statute also requires the Bureau to apply the remedy provisions in TILA (15 U.S.C. § 1640) to PACE loans, so that consumers may recover damages and have access to foreclosure defense and other remedies for violations of the PACE regulations. In addition, Section 307 directs the Bureau to account for the unique nature of PACE loans (such as that it makes use of the tax collection system), permits the Bureau to collect information and data necessary for issuing such rules, and mandates that it consult with state and local governments and bond issuing authorities. The agency also should consult with consumer and mortgage lender stakeholders, as these groups will be impacted by any PACE rulemaking. The Bureau could start the process by holding field hearings in those markets most impacted by residential PACE programs.

Accounting for the unique nature of PACE will allow the Bureau to ensure that defenses to tax lien collection actions are incorporated into the protections and that other TILA provisions are adapted as necessary to accommodate the role of government taxing authorities. The Bureau already has the authority to clarify that TILA's mortgage protections apply to PACE loans and should do so while implementing section 307's requirements, tailoring TILA's disclosure regime to PACE and applying TILA's remedy scheme accordingly.

It is rare for our collective organizations to come together to urge action by the Bureau. Some of our organizations supported passage of the bill while other organizations opposed it. The problems faced by homeowners receiving unaffordable PACE loans and obtaining limited or misleading information, the looming spread of PACE loans throughout the country, and the hidden way in which PACE loans have developed outside our consumer protection framework have brought us together to urge the Bureau to initiate rulemaking. Action is needed to address some of the well-documented consumer problems identified in media reports and by some of our organizations. In many residential settings, PACE loans often have little connection to the promised energy savings either due to overzealous or deceptive marketing, or consumer usage patterns that undermine the expected cost savings. While these problems exist in the home improvement market generally, consumers that use home improvement lending products benefit from consumer protections that do not apply to PACE loans. As this is a form of consumer credit, PACE loans should be subject to the same rules as all other forms of consumer credit used for home improvement, especially when the consumer uses their home as collateral for the loan.

Therefore, we urge you to act and carry out Congress's directive to promulgate ability to repay regulations for PACE loans and to explicitly incorporate PACE into TILA's overall mortgage protections. We look forward to working with the Bureau's staff on this important matter.

Sincerely,

American Bankers Association  
Americans for Financial Reform  
Center for Responsible Lending  
Consumer Federation of America  
Independent Community Bankers of America  
Mortgage Bankers Association  
National Association of REALTORS®  
National Consumer Law Center (on behalf of its low-income clients)  
Public Citizen